

EXHIBIT 6

PART 1

RIKK SALAMAT

<p>5</p> <p>1 VIDEO SPECIALIST: Today is 2 January 29th, 2013, and we are here in Philadelphia, 3 Pennsylvania, and this is the videotaped deposition 4 of Rikk Salamat, taken by the defendant in the 5 matter of Brady, et al, filed -- versus the Air Line 6 Pilot's Association, filed in United States District 7 Court of New Jersey, Camden Vicinage, number 8 02-2917. 9 My name is Jim Bateman from Degnan & 10 Bateman, and I am the certified legal video 11 specialist. The certified court reporter is Jean 12 Delaney, also from the same firm. 13 We are now going on the record and the 14 time is 9:30. 15 Would counsel please announce their 16 appearances for the record. 17 MR. TOAL: Dan Toal with Paul, Weiss, 18 on behalf of ALPA. I'm here with my colleague, 19 Julie Romm and co-counsel, Dan Katz. 20 MS. RODRIGUEZ: Lisa Rodriguez with 21 Trujillo, Rodriguez & Richards for the plaintiffs in 22 the class. 23 VIDEO SPECIALIST: Would the court 24 reporter please swear in the witness? 25 RIKK SALAMAT, having been duly sworn,</p>	<p>7</p> <p>1 what? 2 A The impact on the TWA pilots. 3 Q What's -- what's your area of 4 expertise? 5 A I am an analyst of economic and 6 financial data, particularly in regards to labor 7 unions and professional associations. Specifically, 8 airline pilots being the vast majority of my 9 practice. 10 Q Do you have any other area of expertise 11 that's relevant to this case? 12 A Well, I have an MBA, so I have general 13 business expertise. I have experience in 14 programming for a number of different types of 15 applications. 16 Q And beyond that, do you have any other 17 area of expertise that you consider relevant to this 18 case? 19 A Well, my experience in negotiations, 20 working with unions who are either in mediation, 21 negotiations, arbitrations. So as negotiation 22 support. As an advisor in economic and, you know, 23 financial issues. 24 Q Anything else? 25 A There must be others, but off the top</p>
<p>6</p> <p>1 was examined and testified as follows: 2 VIDEO SPECIALIST: You may proceed. 3 BY MR. TOAL: 4 Q Good morning. 5 A Good morning. 6 Q Could you state your full name for the 7 record? 8 A Rikk Salamat. 9 Q And what were you asked to do in this 10 matter? 11 A Well, I was asked to analyze the impact 12 of ALPA's breach of their duty of fair 13 representation to the TWA pilots. 14 MS. RODRIGUEZ: Just, before you get 15 started, there is one other person in the room. 16 Could you just introduce yourself, sir, on the 17 record? 18 MR. COSSA: Ricardo Cossa from Navigant 19 Economics. 20 MS. RODRIGUEZ: Thank you. 21 BY MR. TOAL: 22 Q So you said you were -- you were asked 23 to analyze the impact of a breach by ALPA? 24 A Yes. 25 Q And you are analyzing the impact on</p>	<p>8</p> <p>1 of my head, those are the ones that are most 2 commonly employed in my practice. 3 Q When you reference others, what -- what 4 others do you think are relevant to this case? 5 A Sorry, could you -- 6 Q When you reference other areas of 7 expertise that must exist, which of those do you 8 consider relevant to this case? 9 A Well, in the negotiation and working 10 with unions requires expertise in, you know, in 11 business, and in, you know, just human 12 relationships, you know, strategy, and tactics, and 13 all of those to some degree are used in this case 14 because we are trying to estimate what might have 15 happened under a different set of circumstances, and 16 you have to draw on a broad range of, you know, 17 skills and experience in order to do that. So -- 18 Q Are -- are you seeking to be qualified 19 in this case as an expert in negotiations? 20 MS. RODRIGUEZ: Objection. 21 BY MR. TOAL: 22 Q You can answer the question. 23 MS. RODRIGUEZ: Calls for a legal 24 conclusion. I don't know that he knows what he is 25 being proffered for. To the extent you know, you</p>

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<p style="text-align: right;">9</p> <p>1 can answer it.</p> <p>2 THE WITNESS: Sorry. Can you repeat</p> <p>3 the question?</p> <p>4 BY MR. TOAL:</p> <p>5 Q The question is, are you seeking to be</p> <p>6 qualified in this case as an expert in negotiations?</p> <p>7 MS. RODRIGUEZ: And again, he is not</p> <p>8 seeking. His counsel will seek.</p> <p>9 THE WITNESS: Yeah. Really, I don't</p> <p>10 know. I mean, if you ask me if I am an expert in</p> <p>11 negotiations, I might say yes depending on the</p> <p>12 context. If you ask if I was --</p> <p>13 BY MR. TOAL:</p> <p>14 Q Well, in the context of this case, do</p> <p>15 you consider yourself an expert on negotiations?</p> <p>16 A Other people have considered me an</p> <p>17 expert in negotiations. I consider myself very well</p> <p>18 experienced. You know, it is really for other</p> <p>19 people to say whether I am an expert or not.</p> <p>20 Q Who has -- who has considered you an</p> <p>21 expert in negotiations?</p> <p>22 A Well, there is -- there is one</p> <p>23 arbitrator who I speak with on some matters who</p> <p>24 considers me an expert in negotiations. My clients</p> <p>25 consider me an expert in negotiations, at least in</p>	<p style="text-align: right;">11</p> <p>1 MS. RODRIGUEZ: Objection. It</p> <p>2 mischaracterizes what he said. You can answer.</p> <p>3 BY MR. TOAL:</p> <p>4 Q You can answer the question.</p> <p>5 A As part of the MBA, yes, there was</p> <p>6 three courses on negotiation.</p> <p>7 Q And you said other courses touched on</p> <p>8 the issues of negotiation?</p> <p>9 A Yeah, negotiations gets, you know,</p> <p>10 involved in, you know, the study of strategy, the</p> <p>11 study of marketing, the study of organizational</p> <p>12 behavior, so -- labor relations, law.</p> <p>13 Q Other than those courses that you</p> <p>14 referenced previously, do you have any other</p> <p>15 specialized academic training in negotiations?</p> <p>16 A Yeah. I -- I mean, I did a course</p> <p>17 in -- in intensive mediation and negotiation at -- I</p> <p>18 can't remember the name of the center, but it was</p> <p>19 with a fellow named Gary Friedman who runs training</p> <p>20 in negotiation and mediation in San Francisco. That</p> <p>21 was one. And then through -- through the University</p> <p>22 of Toronto, there have been several lectures and</p> <p>23 things like that over the years.</p> <p>24 Q And the course you mentioned, how long</p> <p>25 did that course last?</p>
<p style="text-align: right;">10</p> <p>1 the context of their needs. So --</p> <p>2 Q Who is the arbitrator that considers</p> <p>3 you an expert in negotiations?</p> <p>4 A Jim Hayes. Others may. He is the one</p> <p>5 I happen to know does.</p> <p>6 Q Have you ever been qualified by a court</p> <p>7 as an expert in negotiations?</p> <p>8 A I don't believe I have, no.</p> <p>9 Q Have you ever been qualified in an</p> <p>10 arbitration proceeding as an expert on negotiations?</p> <p>11 A Not in negotiations, no.</p> <p>12 Q Have you ever written peer-reviewed</p> <p>13 articles on negotiations?</p> <p>14 A No, I have not.</p> <p>15 Q Do you have any specialized academic</p> <p>16 study in negotiations?</p> <p>17 A It is a large part of taking an MBA at</p> <p>18 the University of Toronto. About -- you know,</p> <p>19 difficult to sort of quantify, but there are</p> <p>20 certainly about three courses exclusively on</p> <p>21 negotiations, and then it touches on several others.</p> <p>22 So negotiations is a large part of that program. So</p> <p>23 that would -- that would be academic training.</p> <p>24 Q So as part of your MBA program, you</p> <p>25 took three courses on negotiation; is that correct?</p>	<p style="text-align: right;">12</p> <p>1 A Four days, I believe. It was a long</p> <p>2 time ago.</p> <p>3 Q Do you have any certifications that</p> <p>4 recognize you as an expert in negotiations?</p> <p>5 A No, I do not.</p> <p>6 Q And what qualifies you as an expert in</p> <p>7 human relations?</p> <p>8 A I -- well, since I've been involved in</p> <p>9 negotiations and -- and conflict for the vast</p> <p>10 majority of my career, I would say I developed a</p> <p>11 significant amount of experience in -- in analyzing</p> <p>12 situations and --</p> <p>13 Q And other than that, anything that</p> <p>14 qualifies you as an expert in human relations?</p> <p>15 A Other than training in -- in my</p> <p>16 undergraduate and graduate degrees.</p> <p>17 Q Other than that, anything else?</p> <p>18 A No.</p> <p>19 Q Have you ever been certified as an</p> <p>20 expert by any court in human relations?</p> <p>21 A No.</p> <p>22 Q Have you ever been recognized as an</p> <p>23 expert by any arbitrator in human relations?</p> <p>24 A No, I have not.</p> <p>25 Q Do you have any specialized academic</p>

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<p style="text-align: right;">13</p> <p>1 training in human relations?</p> <p>2 A By specialized, you mean -- I mean, my</p> <p>3 undergraduate was in anthropology. The entire thing</p> <p>4 was about human relations, so is that specialized</p> <p>5 enough? I mean, you have to really sort of be a</p> <p>6 little more specific about what you mean by</p> <p>7 specialized.</p> <p>8 Q Did you take any courses specifically</p> <p>9 on human relations?</p> <p>10 A Every course in anthropology is on</p> <p>11 human relations.</p> <p>12 Q So do you -- is it your view that</p> <p>13 training in anthropology provides expertise in human</p> <p>14 relations?</p> <p>15 A Some.</p> <p>16 (Salamat-1 Damages in Brady, et al</p> <p>17 versus the Air Line Pilots Association, dated</p> <p>18 October 12, 2012 marked for identification.)</p> <p>19 BY MR. TOAL:</p> <p>20 Q I show you a document that I will mark</p> <p>21 as Salamat Exhibit-1, entitled Damages in Brady, et</p> <p>22 al versus the Air Line Pilots Association, dated</p> <p>23 October 12, 2012.</p> <p>24 Do you recognize this as your report in this</p> <p>25 matter?</p>	<p style="text-align: right;">15</p> <p>1 A Yes.</p> <p>2 Q And below that there is a heading (B),</p> <p>3 witnesses who must provide a written report. Do you</p> <p>4 see that?</p> <p>5 A Yes.</p> <p>6 Q Do you see it says, unless otherwise</p> <p>7 stipulated or ordered by the court, this disclosure</p> <p>8 must be accompanied by a written report prepared and</p> <p>9 signed by the witness if the witness is one retained</p> <p>10 or specially employed to provide expert testimony in</p> <p>11 the case or one whose duties as the party's employee</p> <p>12 regularly involved giving expert testimony. Do you</p> <p>13 see that?</p> <p>14 A Yes.</p> <p>15 Q Okay. Were you aware of the</p> <p>16 requirement that experts sign their reports that's</p> <p>17 embedded in Rule 26 of the Rules of Federal</p> <p>18 Procedure?</p> <p>19 A I assumed it had my electronic</p> <p>20 signature and that I transmitted it to the attorneys</p> <p>21 along with a cover letter.</p> <p>22 Q You assumed that your report had an</p> <p>23 electronic signature?</p> <p>24 A I assumed that that would serve as a</p> <p>25 signature. But, no, I was not aware of this rule,</p>
<p style="text-align: right;">14</p> <p>1 A Looks like it, yeah.</p> <p>2 Q Can you confirm that it is your report?</p> <p>3 A I mean, I'm assuming it is a faithful,</p> <p>4 you know, reproduction of the one I produced, yes.</p> <p>5 Q And you didn't sign this report, did</p> <p>6 you?</p> <p>7 A I don't know whether I did or not. No.</p> <p>8 Q And is there a reason you didn't sign</p> <p>9 this report?</p> <p>10 A No. No particular reason.</p> <p>11 (Salamat-2 Copy of Rule 26 of the</p> <p>12 Rules of Civil Procedure marked for</p> <p>13 identification.)</p> <p>14 BY MR. TOAL:</p> <p>15 Q I marked as Salamat Exhibit-2, a copy</p> <p>16 of Rule 26 of the Federal Rules of Civil Procedure.</p> <p>17 Let me know if you've seen this document</p> <p>18 before.</p> <p>19 A No, I haven't.</p> <p>20 Q Take a look -- I'm using page number at</p> <p>21 the top of the page, page 35 of this document. Do</p> <p>22 you see that?</p> <p>23 A Yes.</p> <p>24 Q Do you see the heading (2) Disclosure</p> <p>25 of Expert Testimony?</p>	<p style="text-align: right;">16</p> <p>1 no.</p> <p>2 Q Okay. And is there some electronic</p> <p>3 signature that's reflected in your report?</p> <p>4 A The fact that it had been emailed by me</p> <p>5 to Joe, and that I could confirm that the PDF that</p> <p>6 had been created and sent to him was my report.</p> <p>7 Q And have you submitted expert reports</p> <p>8 in US Federal Court before?</p> <p>9 A No, I don't think so.</p> <p>10 Q Let me direct your attention to your</p> <p>11 expert report after the conclusion page, on page 52.</p> <p>12 A Page 52. Yes.</p> <p>13 Q Okay. So --</p> <p>14 A Oh, wait, sorry. No. Okay.</p> <p>15 Q So the next page is a copy of your CV;</p> <p>16 correct?</p> <p>17 A That's correct.</p> <p>18 Q Okay. And the page after that is</p> <p>19 entitled Rikk M.T. Salamat, Professional</p> <p>20 Associations; correct?</p> <p>21 A Uh-huh.</p> <p>22 Q And do you see under here, there is a</p> <p>23 listing of cases with expert testimony and/or expert</p> <p>24 reports?</p> <p>25 A Yes.</p>

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<p style="text-align: right;">17</p> <p>1 Q If you go down toward the bottom of the</p> <p>2 page, the third from the bottom, there is an entry</p> <p>3 for US District Court for the District of Arizona,</p> <p>4 and it indicates there is an expert report filed for</p> <p>5 the USAirways Pilot's Association. Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Did you submit an expert report in that</p> <p>8 case?</p> <p>9 A Yes, I did.</p> <p>10 Q Okay. And that's a US Federal Court?</p> <p>11 A Well, I didn't know that that was a</p> <p>12 federal court. Sorry. I was mistaken, if that is a</p> <p>13 federal court. I thought that was a state court.</p> <p>14 Q So other than that report, have you</p> <p>15 submitted any other expert reports in any court in</p> <p>16 the United States?</p> <p>17 A No, I have not. I'm not -- I don't</p> <p>18 know -- I don't know if System Board of Adjustments</p> <p>19 count as a -- a court.</p> <p>20 Q The report you submitted to the</p> <p>21 District Court in Arizona, did you sign that report?</p> <p>22 A I cannot recall.</p> <p>23 Q So do you see below the language we</p> <p>24 read in Rule 26, it says, the report must contain --</p> <p>25 A Sorry. What page are we on again?</p>	<p style="text-align: right;">19</p> <p>1 Q In reviewing your report, I -- I didn't</p> <p>2 find any list of publications that you had reviewed</p> <p>3 prior -- that you had published the prior ten years.</p> <p>4 A I haven't published anything in the</p> <p>5 last ten years.</p> <p>6 Q Have you published written work at any</p> <p>7 time in your professional career?</p> <p>8 A No.</p> <p>9 Q Have you done any academic research at</p> <p>10 any time in your professional career?</p> <p>11 A As a student, certainly.</p> <p>12 Q And -- and from the time that you</p> <p>13 graduated from school, did you conduct academic</p> <p>14 research at any time thereafter?</p> <p>15 A I'm sorry. You would have to be a</p> <p>16 little more specific about what -- about what</p> <p>17 constitutes academic research. I'm continually</p> <p>18 doing academic research.</p> <p>19 Q And -- and what academic research have</p> <p>20 you done?</p> <p>21 A My office subscribes to, you know, a</p> <p>22 handful of journals that I review. I get -- I go to</p> <p>23 lectures at the University of Toronto routinely.</p> <p>24 However, I mean, it is not under the guidance of any</p> <p>25 supervisor, so it is self-directed academic</p>
<p style="text-align: right;">18</p> <p>1 Page 26?</p> <p>2 Q Page 35 of Rule 26.</p> <p>3 A Okay.</p> <p>4 Q So do you see where it says, the report</p> <p>5 must contain, and then there are a listing of items?</p> <p>6 A The report must contain, yes.</p> <p>7 Q Okay. So (i) says, a complete</p> <p>8 statement of all opinions the witness will express</p> <p>9 and the basis and reasons for them. Do you see</p> <p>10 that?</p> <p>11 A Uh-huh.</p> <p>12 Q Does your report contain a complete</p> <p>13 statement of all opinions that you will express and</p> <p>14 the basis and reasons for them?</p> <p>15 A I believe it does.</p> <p>16 Q Does your report contain the facts or</p> <p>17 data considered by you in forming these opinions?</p> <p>18 A Yes.</p> <p>19 Q And does it contain all the facts and</p> <p>20 data that you considered in forming your opinions?</p> <p>21 A Yes.</p> <p>22 Q Do you see number four says, the</p> <p>23 witness's qualifications, including a list of all</p> <p>24 publications authored in the previous ten years?</p> <p>25 A Yes.</p>	<p style="text-align: right;">20</p> <p>1 research.</p> <p>2 Q My question is not whether you've read</p> <p>3 research done by others, but whether you've actually</p> <p>4 conducted academic research on your own.</p> <p>5 MS. RODRIGUEZ: I object to the form.</p> <p>6 THE WITNESS: I'm sorry. You would</p> <p>7 have -- you would have to be much more specific. I</p> <p>8 am -- I am routinely conducting research which I</p> <p>9 would consider academic, but it's not within the</p> <p>10 auspices of the university or under the direction of</p> <p>11 -- of a professor, so --</p> <p>12 BY MR. TOAL:</p> <p>13 Q And you've never done anything to</p> <p>14 publish the results of any research you've done?</p> <p>15 A No.</p> <p>16 Q Have you done any original academic</p> <p>17 research?</p> <p>18 MS. RODRIGUEZ: Objection.</p> <p>19 THE WITNESS: Again, what do you mean</p> <p>20 by original academic research?</p> <p>21 BY MR. TOAL:</p> <p>22 Q Something other than reading the work</p> <p>23 of other people.</p> <p>24 A Yes.</p> <p>25 Q And what sort of academic research have</p>

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<p style="text-align: right;">21</p> <p>1 you done?</p> <p>2 A I've done primary research on the</p> <p>3 trends in the regional air carrier market, its</p> <p>4 ownership structure, its position in North American</p> <p>5 air traffic and air marketplace. I've done research</p> <p>6 on pilot contracts, particularly as -- you know, in</p> <p>7 terms of scope and compensation. I would consider</p> <p>8 all that academic because it is of no particular</p> <p>9 consulting interest.</p> <p>10 Q Were -- were those things done in</p> <p>11 connection with particular engagements for clients?</p> <p>12 A No.</p> <p>13 Q And any other academic research that</p> <p>14 you've done in your professional career?</p> <p>15 MS. RODRIGUEZ: Objection to the form.</p> <p>16 You can answer.</p> <p>17 THE WITNESS: I think those -- those</p> <p>18 two would be the most involved that I've done.</p> <p>19 BY MR. TOAL:</p> <p>20 Q Can you recall any others as you sit</p> <p>21 here today?</p> <p>22 A No, I can't.</p> <p>23 Q Have you ever taught on any of the</p> <p>24 subjects in which you consider yourself an expert?</p> <p>25 A No.</p>	<p style="text-align: right;">23</p> <p>1 Q Are there any other opinions that you</p> <p>2 plan to offer beyond those that are reflected in</p> <p>3 your report and any supplemental work you are doing</p> <p>4 in connection with mitigation?</p> <p>5 A I don't -- I don't believe so, no.</p> <p>6 Q You are not aware of any as you sit</p> <p>7 here today?</p> <p>8 A No.</p> <p>9 (Salamat-3 Supplementary Report on</p> <p>10 Damages Under the Farber Lists marked for</p> <p>11 identification.)</p> <p>12 BY MR. TOAL:</p> <p>13 Q I'll hand you a document that I marked</p> <p>14 as Salamat Exhibit-3, which is entitled</p> <p>15 Supplementary Report on Damages under the Farber</p> <p>16 lists.</p> <p>17 A Uh-huh.</p> <p>18 Q Is this a document that you recognize?</p> <p>19 A Yes.</p> <p>20 Q And is this a document that you</p> <p>21 prepared?</p> <p>22 A Yes.</p> <p>23 Q And what is this document?</p> <p>24 A This is a report on the results of</p> <p>25 running this Farber -- these Farber lists through</p>
<p style="text-align: right;">22</p> <p>1 Q Do you have any plans to do any further</p> <p>2 work in connection with your expert report in this</p> <p>3 case?</p> <p>4 A I - I -- I can't imagine how I -- how I</p> <p>5 would but -- so I would have to say no.</p> <p>6 Q You don't have any present plans, as</p> <p>7 you sit here today, to do further work on your</p> <p>8 expert report; is that correct?</p> <p>9 MS. RODRIGUEZ: Objection. Other than</p> <p>10 the work that you know he's already done?</p> <p>11 THE WITNESS: I'm sorry, when -- when</p> <p>12 you say do further work on this report, do you mean</p> <p>13 continue to analyze the matter, because there is</p> <p>14 still a few outstanding issues related to the</p> <p>15 report, particularly as -- as, you know, regards</p> <p>16 mitigation, so yeah. There is still some work to be</p> <p>17 done on this report.</p> <p>18 BY MR. TOAL:</p> <p>19 Q And what additional work do you plan to</p> <p>20 do?</p> <p>21 A Estimate the mitigation.</p> <p>22 Q And other than estimating mitigation,</p> <p>23 is there any other work that you plan to do on your</p> <p>24 report?</p> <p>25 A Not -- not as I sit here today.</p>	<p style="text-align: right;">24</p> <p>1 the software we developed for this case.</p> <p>2 Q Had you reviewed Professor Farber's</p> <p>3 report at the time you prepared this supplementary</p> <p>4 report?</p> <p>5 A I still haven't seen his report.</p> <p>6 Q So at the time you prepared this, you</p> <p>7 hadn't reviewed Professor Farber's report; correct?</p> <p>8 A The only thing I -- I had, you know,</p> <p>9 were three lists which I think I provided as part of</p> <p>10 this report, and -- and that's -- that's the only</p> <p>11 thing I knew about the Farber report. I knew there</p> <p>12 was such a report, and that he produced three lists,</p> <p>13 and we ran them through the software.</p> <p>14 Q Did you know anything about the</p> <p>15 methodology this Professor Farber was using?</p> <p>16 A I didn't know anything about Farber.</p> <p>17 Q And you still have not reviewed his</p> <p>18 report; correct?</p> <p>19 A No.</p> <p>20 Q Did you calculate, using Professor</p> <p>21 Farber's lists, a lower bound of damages than he</p> <p>22 calculated?</p> <p>23 A I -- I just ran his three lists through</p> <p>24 the software, and that's all I've done with Farber's</p> <p>25 lists.</p>

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<p style="text-align: right;">25</p> <p>1 Q Did you -- did you have an</p> <p>2 understanding that one of those lists was what</p> <p>3 Professor Farber identified as a lower bound on</p> <p>4 damages?</p> <p>5 A I just -- I didn't have a name for the</p> <p>6 list. I just had three lists, and I think I named</p> <p>7 them A, B, C, or one, two, three, or something like</p> <p>8 that. I just gave them cardinal names. So I don't</p> <p>9 know what they represent.</p> <p>10 Q So -- so is the answer to my question,</p> <p>11 no, that you didn't have an understanding that one</p> <p>12 of his lists was designated as a lower bound on</p> <p>13 damages?</p> <p>14 A No.</p> <p>15 Q You did not have such an understanding;</p> <p>16 correct?</p> <p>17 A I did not have such an understanding.</p> <p>18 (Salamat-4 Document entitled</p> <p>19 Supplementary Report on Damages Under the</p> <p>20 Tannen List marked for identification.)</p> <p>21 BY MR. TOAL:</p> <p>22 Q Let me mark as Salamat Exhibit-4, a</p> <p>23 document entitled supplementary report on damages</p> <p>24 under the Tannen list.</p> <p>25 And if you can let me know if you recognize</p>	<p style="text-align: right;">27</p> <p>1 Q Is it a document that you prepared?</p> <p>2 A It is.</p> <p>3 Q And what were you attempting to analyze</p> <p>4 in this document?</p> <p>5 A I was attempting to analyze -- well,</p> <p>6 I'm not sure analyze is the right word, but I was</p> <p>7 just attempting to -- what I was doing here was just</p> <p>8 stating the amounts of income that pilots had</p> <p>9 claimed they had earned during periods when they</p> <p>10 were on furlough, and which would, therefore, most</p> <p>11 likely offset any damages that were incurred.</p> <p>12 Q And you entitled this, preliminary</p> <p>13 calculation; correct?</p> <p>14 A That's right.</p> <p>15 Q And why did you give it that title?</p> <p>16 A Well, because a more thorough</p> <p>17 calculation would involve actually going through</p> <p>18 each pilot's, the documentation they provided, their</p> <p>19 -- their W2s, their 1040s, their Social Security</p> <p>20 statements, and actually doing an analysis of what</p> <p>21 their income had been prior to, during, and after</p> <p>22 furlough, and then determining whether we had</p> <p>23 sufficient documentation to say that their income,</p> <p>24 you know, was what they had claimed on the</p> <p>25 questionnaire. So this is preliminary to the extent</p>
<p style="text-align: right;">26</p> <p>1 that document?</p> <p>2 A I do.</p> <p>3 Q And what is this document?</p> <p>4 A This is the result of having run the</p> <p>5 Tannen list, the rightful place proposal list,</p> <p>6 through the software.</p> <p>7 Q And this is a document you prepared;</p> <p>8 correct?</p> <p>9 A It is.</p> <p>10 Q And why -- why did you decide to run</p> <p>11 the Tannen list through your software?</p> <p>12 A I was requested.</p> <p>13 Q By whom?</p> <p>14 A By, I believe, Joe Jacobson.</p> <p>15 (Salamat-5 Preliminary Calculation of</p> <p>16 Mitigation of Damages in Brady et al versus</p> <p>17 the Air Line Pilot's Association marked for</p> <p>18 identification.)</p> <p>19 BY MR. TOAL:</p> <p>20 Q Let me mark as Salamat Exhibit-5 a</p> <p>21 document entitled Preliminary Calculation of</p> <p>22 Mitigation of Damages in Brady et al versus the Air</p> <p>23 Line Pilot's Association.</p> <p>24 Let me know if you recognize that document.</p> <p>25 A I do.</p>	<p style="text-align: right;">28</p> <p>1 that what we are doing is we're just taking the</p> <p>2 pilot's statements about what their income was and</p> <p>3 using it as it is rather than attempting to</p> <p>4 substantiate those claims.</p> <p>5 Q And do you plan to submit a final</p> <p>6 calculation of mitigation of damages?</p> <p>7 A Potentially.</p> <p>8 Q Do you have plans to do that, as you</p> <p>9 sit here today?</p> <p>10 A I imagine we will, but it is an</p> <p>11 enormous undertaking, and so it may be done by</p> <p>12 somebody else, or it may be done, you know, in some</p> <p>13 other fashion.</p> <p>14 Q Are you working currently to prepare a</p> <p>15 final calculation of mitigation of damages?</p> <p>16 A No, I'm not.</p> <p>17 Q And after doing the work that's</p> <p>18 reflected in your preliminary calculation of</p> <p>19 mitigation of damages, have you done any further</p> <p>20 work regarding mitigation of damages?</p> <p>21 A Yes, there is a secondary -- there is a</p> <p>22 revised version of this report which will be dated</p> <p>23 the 30th of January.</p> <p>24 Q And what additional work did you do in</p> <p>25 connection with that revised version of the report?</p>

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<p style="text-align: right;">29</p> <p>1 A We have -- we received further 2 information from pilots, and so that second -- that 3 -- that revised version of this report will reflect 4 the additional information we've received. 5 Q You see at the first page of this 6 preliminary calculation -- 7 A Uh-huh. 8 Q -- you indicate that you had received 9 547 responses from class members concerning 10 mitigation of damages; right? 11 A That's correct. 12 Q And of those 547, you indicated that 13 298 had some supporting documentation; correct? 14 A That's correct. 15 Q For your revised report, how many 16 responses will that report reflect? 17 A Approximately 1,200. 18 Q And of those, how many have supporting 19 documentation? 20 A I -- I wouldn't be able to say off the 21 top of my head. 22 Q What's your best recollection? 23 A I really couldn't say off the top of my 24 head how many had supporting documentation. It will 25 be in -- it will be in the report, but --</p>	<p style="text-align: right;">31</p> <p>1 your -- your report in this matter? 2 A Sorry. When you say work with? I have 3 assistants. 4 Q Did they assist you in preparing the 5 report? 6 A Not in preparing the report, no. 7 Q Did anyone assist you in any way in 8 producing the report? 9 A Not in any substantial way, no. 10 Q What support did you receive? 11 A Well, for instance, my wife proofread 12 it for me. 13 Q And other than that, is there anyone at 14 Case Lab, for instance, who worked with you and 15 helped you prepare the report? 16 A No. 17 Q Okay. Anyone at any other organization 18 who worked with you in helping you to prepare the 19 report? 20 A No. 21 Q Did you receive any support with regard 22 to software that you used? 23 A I'm sorry. When you -- when you say 24 support for software -- 25 Q Did -- did anyone help you write</p>
<p style="text-align: right;">30</p> <p>1 Q And in connection with that revised 2 analysis, have you made any efforts to verify the 3 statements in the questionnaires against 4 documentation that was provided? 5 A No. 6 Q Is there a reason why you have not? 7 A As I mentioned, it was -- it is quite a 8 large undertaking that the litigation support people 9 have taken on, and so our first objective is to get 10 all of the materials scanned and turned over to 11 ALPA's lawyers, and our second is to get everybody's 12 responses input into a database so that we can run 13 this. So verifying their information just isn't 14 possible given the timelines that we've been given. 15 Q And are you working on this, 16 personally? 17 A No. 18 Q Are people under your direction working 19 on this project? 20 A Yes. 21 Q How many people are working on it? 22 A Four. 23 Q Are those people employed by Case Lab? 24 A They are subcontracted by Case Lab. 25 Q Did you work with anyone to produce</p>	<p style="text-align: right;">32</p> <p>1 software, run software? 2 A No. 3 Q Did you receive any support in 4 connection with any of the calculations you 5 performed that are reflected in your report? 6 A Support? I would say not -- no. I 7 would not say support. 8 Q Did -- did you bill -- who -- who 9 retained you in this case? 10 A I believe the retainer was signed by 11 Nicole Acchione. 12 Q So have you been retained by counsel 13 for the class in this case? 14 A Yes. 15 Q And do you provide invoices to them 16 seeking compensation for the time you've spent on 17 this matter? 18 A I do. 19 Q On those invoices, would they reflect 20 that you've sought compensation for anyone other 21 than yourself who worked on this matter? 22 A Other than for the litigation support, 23 preparing pilot responses, I don't believe so, no. 24 Q And how much time have you spent in 25 connection with this matter?</p>

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<p style="text-align: right;">33</p> <p>1 A Several months.</p> <p>2 Q And in -- in terms of hours, what's</p> <p>3 your best estimate of the number of hours you've</p> <p>4 spent on this engagement?</p> <p>5 A 300. I mean, that's a guess. I really</p> <p>6 would have to go back and look at all of the</p> <p>7 invoices and --</p> <p>8 Q As you sit here today, that's your --</p> <p>9 your best estimate?</p> <p>10 A My best guess would be around 300</p> <p>11 hours.</p> <p>12 Q And how much have you been compensated</p> <p>13 in connection with this case?</p> <p>14 A Well, the firm will have billed counsel</p> <p>15 somewhere, I guess, between 90 and a hundred</p> <p>16 thousand dollars, I would assume, up to now.</p> <p>17 Q And do you submit invoices to counsel</p> <p>18 monthly?</p> <p>19 A Monthly.</p> <p>20 Q And you didn't prepare a separate list</p> <p>21 of documents that you considered in connection with</p> <p>22 your work; correct?</p> <p>23 A A -- a separate list of documents? No.</p> <p>24 Q In your report or any appendix to your</p> <p>25 report, did you prepare a list of documents that you</p>	<p style="text-align: right;">35</p> <p>1 which -- most of which, you know, had nothing that I</p> <p>2 considered relevant to what we were doing.</p> <p>3 Q So do you remember when we were looking</p> <p>4 at Rule 26 and the rule indicated that the report</p> <p>5 must contain the facts or data considered by the</p> <p>6 witness in forming your opinions?</p> <p>7 A Uh-huh.</p> <p>8 Q Does your report identify all the facts</p> <p>9 and data that you considered in forming your</p> <p>10 opinions?</p> <p>11 A It does.</p> <p>12 Q And does that include all documents</p> <p>13 that you reviewed in connection with your work on</p> <p>14 this case?</p> <p>15 A If I reviewed a document and it had no</p> <p>16 impact on -- on my estimation or my analysis, I</p> <p>17 didn't cite it.</p> <p>18 Q Would you be able to recreate a list of</p> <p>19 the documents that you reviewed in connection with</p> <p>20 your work on this case?</p> <p>21 A No.</p> <p>22 Q You didn't keep any records of that?</p> <p>23 A Well, for instance, one of the journals</p> <p>24 I receive in the office is called The Negotiation</p> <p>25 Journal. We have about four, five years of them</p>
<p style="text-align: right;">34</p> <p>1 considered in connection with your work on this</p> <p>2 matter?</p> <p>3 A Other than documents that were cited in</p> <p>4 the report, no.</p> <p>5 Q So my question refers to, did you</p> <p>6 prepare a list anywhere of the documents that you</p> <p>7 considered?</p> <p>8 MS. RODRIGUEZ: Objection.</p> <p>9 THE WITNESS: I think there was a few</p> <p>10 lists. I mean, there was a list of arbitration</p> <p>11 awards that I looked at. That's in the report.</p> <p>12 There was some academic sources cited, so they</p> <p>13 weren't listed but they're --</p> <p>14 BY MR. TOAL:</p> <p>15 Q All I'm trying to establish is, is</p> <p>16 there a list somewhere that identifies every single</p> <p>17 document that you considered in connection with your</p> <p>18 work on this case?</p> <p>19 A No, there is not.</p> <p>20 Q To the extent you considered a document</p> <p>21 in connection with your work on this case, would it</p> <p>22 be cited somewhere in your report?</p> <p>23 A No. No. There is documents that -- I</p> <p>24 mean, I -- I reviewed, you know, 40 or 50 academic</p> <p>25 articles all on the subject of negotiations, some of</p>	<p style="text-align: right;">36</p> <p>1 sitting on the shelf, and I pulled each one down,</p> <p>2 and looked through the abstracts, and said does this</p> <p>3 article have anything that might be useful in this</p> <p>4 analysis? And if it -- if it didn't, I put them</p> <p>5 back on the shelf. So, you know, in order to</p> <p>6 produce a list of everything I considered, I would</p> <p>7 have to go through all of the indexes of every</p> <p>8 journal on the shelf that I picked up, and looked</p> <p>9 at, and said does it have anything that can help us</p> <p>10 with this matter.</p> <p>11 Q Well, did you also look, not only for</p> <p>12 things that could help you in the matter, but things</p> <p>13 that were contrary to --</p> <p>14 A Absolutely. Those were the things I</p> <p>15 was most interested in finding.</p> <p>16 Q And what efforts did you make to find</p> <p>17 articles that were contrary to any of your opinions</p> <p>18 in this case?</p> <p>19 A Well, aside from the publications on</p> <p>20 our shelf, you know, I went to JSTOR, which is, you</p> <p>21 know, the academic journal search, and, you know,</p> <p>22 did a number of keyword searches looking for</p> <p>23 anything that would have relevance to negotiation,</p> <p>24 you know, under pressure, negotiation under the</p> <p>25 conditions of uncertainty, negotiations and</p>

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<p style="text-align: right;">37</p> <p>1 coercion. And anything I found that looked like it 2 could have some relevance to what we were studying, 3 I believe they all ended up in the report. 4 Q What is JSTOR that you mentioned? 5 A It is a journal search through the 6 University of Toronto. I believe it is available to 7 the public, as well as through the University of 8 Toronto. 9 Q Did you search any other databases 10 other than JSTOR. 11 A Elsevier. Those are the two that I 12 recall. 13 Q What's Elsevier? 14 A I think that's the University of 15 Chicago's journal search database. 16 Q Did you keep a record of the keyword 17 searches that you performed? 18 A No. 19 Q And how much time did you spend 20 reviewing those databases? 21 A It would be impossible to say. 22 Q Well, of your 300 hours, what's your 23 best estimate of the amount of time you spent 24 looking for research relevant to this assignment? 25 A Well, the difficulty is, that type of</p>	<p style="text-align: right;">39</p> <p>1 A I didn't consider them relevant. 2 Q Did you consider any testimony that was 3 provided in the liability phase of the trial in this 4 case? 5 A Some -- some testimony, yes. 6 Q And what testimony did you consider? 7 A The closing of -- I'm sorry. I don't 8 know Fram's first name. 9 Q Steve. 10 A Steve Fram. The closing of Allen 11 Press. The charge to the jury. And some parts of 12 Mike Day's testimony. 13 Q So the -- the opening and closing 14 statements and charging the jury is not considered 15 testimony. I was focused on witnesses who were 16 testifying under oath. 17 Did you consider any -- any such testimony 18 from the liability phase of this case, other than I 19 think you mentioned Mike Day's testimony? 20 A Mike Day. 21 Q And why -- why did you decide to 22 consider Mike Day's testimony and nobody else's? 23 A I looked at Mike Day's testimony 24 specifically because he went through the history of 25 the negotiation with the APA in some detail. He had</p>
<p style="text-align: right;">38</p> <p>1 work doesn't generally end up in the 300 hours. I 2 would imagine several days were involved in, you 3 know, looking for journals -- journal articles. 4 Q And how many hours on those days? 5 A Six. 6 Q Six hours each? 7 A Six hours each. So maybe 18 to 24 8 hours of reading abstracts. 9 Q Did you consider, in connection with 10 your work on this matter, any of the bankruptcy 11 filings from the TWA bankruptcy proceeding? 12 A No, I did not. 13 Q Were those made available to you? 14 A No, they were not. 15 Q Did you -- were you interested in 16 reviewing those materials? 17 A No. 18 Q Did you think they would be relevant to 19 your work? 20 A No, I didn't. 21 Q Did you review any public filings 22 concerning TWA prior to the time of the transaction 23 with American Airlines? 24 A No. I don't believe I did. 25 Q And why not?</p>	<p style="text-align: right;">40</p> <p>1 some relevant facts and figures about how the 2 various proposals had changed -- that had been 3 passed back and forth. That was of interest in 4 terms of how the negotiation proceeded, so -- 5 Q So how -- how did you know what would 6 be in Mr. Day's testimony before you reviewed it? 7 A Well, I knew he was the merger chair, 8 so -- 9 Q Did you receive any guidance from 10 anyone about what trial testimony it made sense for 11 you to review? 12 A No. 13 Q Did you have access to the testimony of 14 all the witnesses who testified in the liability 15 phase of the case? 16 A I believe I did have a complete 17 transcript. 18 Q Did you review testimony from any of 19 the congressional hearings regarding the proposed 20 TWA transaction? 21 A No, I did not. 22 Q Did you review any deposition testimony 23 from any of the former American Airlines executives 24 that was taken in the damages phase of this case? 25 A No, I did not.</p>

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<p style="text-align: right;">41</p> <p>1 Q Were you aware that those depositions 2 had taken place? 3 A You mean the damages phase of the 4 trial? 5 Q Yes. 6 A The one we are in right now? 7 Q That's right. 8 A No. I didn't -- I was not aware. 9 Q Is that something you think would have 10 been relevant to your work? 11 MS. RODRIGUEZ: Objection. 12 THE WITNESS: The statement of 13 executives? 14 BY MR. TOAL: 15 Q The testimony of American Airlines 16 executives. 17 A No. 18 Q Did -- did you review any of the 19 deposition testimony of former TWA executives that 20 was taken in the damages phase of this case? 21 A No, I did not. 22 Q Were you aware that those depositions 23 had taken place? 24 A No. 25 Q Is that something that may have been</p>	<p style="text-align: right;">43</p> <p>1 information regarding the APA that -- that would 2 have been relevant to your work? 3 MS. RODRIGUEZ: Objection. 4 THE WITNESS: You know, no, I don't -- 5 I don't believe there is. 6 BY MR. TOAL: 7 Q And why is that? 8 MS. RODRIGUEZ: Objection. 9 THE WITNESS: Why do I not believe 10 anything they could -- well, if -- they can't go 11 back and say what they would have done under a 12 completely alternate set of circumstances. 13 BY MR. TOAL: 14 Q But you can? 15 MS. RODRIGUEZ: Objection. 16 THE WITNESS: I can only say what's 17 most probable. 18 BY MR. TOAL: 19 Q And how is it you are able to say 20 what -- what was most probably going to happen -- 21 MS. RODRIGUEZ: Objection -- 22 BY MR. TOAL: 23 Q -- in -- in the negotiation had the 24 circumstances been different? 25 A It -- this goes to the heart of the</p>
<p style="text-align: right;">42</p> <p>1 relevant to your analysis? 2 A No. 3 Q Did you review any of the deposition 4 testimony of the former APA representatives that was 5 taken in the damages phase of this case? 6 A No, I did not. 7 Q Were you aware that those depositions 8 had taken place? 9 A No. 10 Q Is that something that might have been 11 relevant to your analysis? 12 A No. 13 Q Why not? 14 A Why would it not be relevant? 15 Q Yeah. 16 A Well, first of all, I would have to 17 know who they were, what they were speaking about 18 and -- and a great deal more. And that said, it's 19 still just one person's opinion. 20 Q Well, you -- you gave a very 21 categorical answer that that testimony wouldn't be 22 relevant to your work without knowing who those 23 witnesses were and what position they held; correct? 24 A That's correct. 25 Q Is it your view that there is any</p>	<p style="text-align: right;">44</p> <p>1 report where it's analyzing what effective 2 representation by ALPA would have done to the 3 dynamics of the negotiation. We have to assume that 4 the parties to this negotiation would behave 5 under -- under pressure the same as other parties. 6 And so, given the actions available to ALPA and the 7 pressures that that would have brought, I'm left to 8 conclude that it's more probable than not that the 9 APA would have behaved the same as theory says they 10 would have. 11 Q Have you spoken with any of the named 12 plaintiffs in this case? 13 A I -- I don't believe I have, no. I 14 don't know who the named plaintiffs are. I don't 15 think I've spoken to Brady. In -- in connection 16 with this mitigation exercise that we are going 17 through, I fielded a bunch of calls from -- from 18 pilots about what they are supposed to be sending 19 in, so it is -- it's not impossible that I've spoken 20 to one of them in connection with that, but I don't 21 recall. 22 Q Have you talked to those pilots about 23 the substance of this case? 24 A No. 25 MS. RODRIGUEZ: Objection.</p>

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<p style="text-align: right;">45</p> <p>1 BY MR. TOAL:</p> <p>2 Q Do you know who Ted Case is?</p> <p>3 A I do know who Ted Case is.</p> <p>4 Q And have you spoken with Mr. Case?</p> <p>5 A I believe he was on a conference call</p> <p>6 at -- at one point, but I didn't speak directly with</p> <p>7 him.</p> <p>8 Q Do you know who Michael Finucan is?</p> <p>9 A I recognize the name.</p> <p>10 Q Have you spoken with Mr. Finucan?</p> <p>11 A No, I have not.</p> <p>12 Q Do you know who Howard Hollander is?</p> <p>13 A Yes, I know his name.</p> <p>14 Q And have you spoken with Mr. Hollander?</p> <p>15 A Yes.</p> <p>16 Q Do you know who Sally Young is?</p> <p>17 A Yes.</p> <p>18 Q And have you spoken with Ms. Young?</p> <p>19 A No.</p> <p>20 Q Is there any information that you think</p> <p>21 could be relevant to your analysis that you sought</p> <p>22 but weren't able to acquire?</p> <p>23 A Well, crystal ball aside, I don't</p> <p>24 believe so, no.</p> <p>25 Q And why do you say, crystal ball aside?</p>	<p style="text-align: right;">47</p> <p>1 A Yes.</p> <p>2 Q And which negotiations was that</p> <p>3 retention related to?</p> <p>4 A I believe they were related to</p> <p>5 settlement negotiations.</p> <p>6 Q Okay. When -- when was that retention?</p> <p>7 A November of 2011.</p> <p>8 Q And what did you do in connection with</p> <p>9 that work?</p> <p>10 A I estimated what the damages would be</p> <p>11 under several different lists.</p> <p>12 Q Is any of the work you did in</p> <p>13 connection with that retention reflected in your</p> <p>14 expert report?</p> <p>15 A The software that we used to do that</p> <p>16 original estimate was included with the production</p> <p>17 of this report.</p> <p>18 Q And were any of the lists that you</p> <p>19 generated in connection with that retention, do any</p> <p>20 of those appear in your expert report?</p> <p>21 A The Supplement CC Plus 200 list may</p> <p>22 have been one of the ones that we -- we used for</p> <p>23 that exercise.</p> <p>24 Q Was the -- the list you identified as</p> <p>25 the Salamat list in your expert report, one of the</p>
<p style="text-align: right;">46</p> <p>1 A I say crystal ball aside being if we</p> <p>2 could go back and re-live history under a different</p> <p>3 set of circumstances, that would have been</p> <p>4 educational.</p> <p>5 Q So other than that, anything that you</p> <p>6 thought might be relevant to your opinions that you</p> <p>7 sought but weren't able to obtain?</p> <p>8 A I don't -- I don't believe there was</p> <p>9 anything that I asked for that wasn't -- that I</p> <p>10 wasn't able to find.</p> <p>11 Q And you can't think of anything, as you</p> <p>12 sit here today?</p> <p>13 A I can't think of anything.</p> <p>14 Q And when were you first retained in</p> <p>15 this matter?</p> <p>16 A Well, I was retained once in order to</p> <p>17 assist in negotiations, which was, of course,</p> <p>18 related to this matter, but then retained a second</p> <p>19 time to actually produce this report.</p> <p>20 Q So with respect to the first retention</p> <p>21 that you mentioned, what was it you were retained to</p> <p>22 do in that case?</p> <p>23 A Do a damage calculation.</p> <p>24 Q That's the first retention that you</p> <p>25 referred to?</p>	<p style="text-align: right;">48</p> <p>1 lists that you prepared in connection with that</p> <p>2 retention?</p> <p>3 A No.</p> <p>4 Q Then you mentioned there was a second</p> <p>5 retention; correct?</p> <p>6 A That's correct.</p> <p>7 Q And when was your second retention?</p> <p>8 A It was in the spring of 2012. I -- I</p> <p>9 don't really remember the month.</p> <p>10 Q Now, have you done anything to prepare</p> <p>11 for this deposition?</p> <p>12 A I met with Joe Jacobson to go over my</p> <p>13 report.</p> <p>14 Q When did that happen?</p> <p>15 A Last week.</p> <p>16 Q Which day?</p> <p>17 A Thursday and Friday.</p> <p>18 Q How long were those meetings?</p> <p>19 A Well, we met for about five hours on</p> <p>20 Thursday and maybe an hour on Friday.</p> <p>21 Q Other than that, have you done anything</p> <p>22 to prepare for this deposition?</p> <p>23 A Re-read my report. That's about it.</p> <p>24 Q Is there anything else?</p> <p>25 A Just re-read my report.</p>

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<p style="text-align: right;">49</p> <p>1 Q Did you review any of the materials</p> <p>2 that you cited in your report?</p> <p>3 A In a -- in a small way, but not really,</p> <p>4 no.</p> <p>5 Q And which -- which materials cited in</p> <p>6 your report did you review to prepare for this</p> <p>7 deposition?</p> <p>8 A I particularly went back and -- and</p> <p>9 looked at -- at William McCursey's material on -- on</p> <p>10 the behavioral theory on negotiation. I went back</p> <p>11 and looked at that again. That's the only article I</p> <p>12 think I pulled up.</p> <p>13 Q Now, these meetings with Mr. Jacobson,</p> <p>14 was anyone else present?</p> <p>15 A No.</p> <p>16 Q You make -- do you make any assumptions</p> <p>17 in connection with your expert report?</p> <p>18 MS. RODRIGUEZ: Objection.</p> <p>19 THE WITNESS: If -- if I make any</p> <p>20 assumptions, I -- I believe they would be stated in</p> <p>21 the report.</p> <p>22 BY MR. TOAL:</p> <p>23 Q And what assumptions can you recall</p> <p>24 that you made in your report, as you sit here today?</p> <p>25 A There is a lot of assumptions about age</p>	<p style="text-align: right;">51</p> <p>1 TWA's financial condition at the time of the</p> <p>2 transaction?</p> <p>3 A No, I did not.</p> <p>4 Q Did you make any assumptions about</p> <p>5 TWA's viability as an air carrier in the absence of</p> <p>6 the American Airlines transaction?</p> <p>7 A No, I did not.</p> <p>8 Q Did you make any assumptions in your</p> <p>9 report about the operation of the St. Louis fence?</p> <p>10 A I mean, I assumed there was a St. Louis</p> <p>11 fence and that it had a certain impact on the TWA</p> <p>12 pilots, but I think the fence is a given. I don't</p> <p>13 think there is any assumptions that need to be made</p> <p>14 about it.</p> <p>15 Q And how did you form your understanding</p> <p>16 of how the St. Louis fence would operate?</p> <p>17 A From the Supplement CC agreement.</p> <p>18 Q From reading the text of Supplement CC?</p> <p>19 A That's correct.</p> <p>20 Q And did you interpret Supplement CC on</p> <p>21 your own with regard to how the fence would work?</p> <p>22 A Well, I mean, I had the text of</p> <p>23 Supplement CC, plus I had the employment history of</p> <p>24 all the TWA pilots for the last decade, so I could</p> <p>25 see how it works. I could see what base they were</p>
<p style="text-align: right;">50</p> <p>1 of retirement, for instance. I can't recall</p> <p>2 specifically what age we used, but in calculating</p> <p>3 future damages, we have to assume some average age</p> <p>4 of retirement at which pilots are going to leave and</p> <p>5 provide advancement opportunities for other pilots,</p> <p>6 so there would be an assumption about that.</p> <p>7 Assumption about future interest rates.</p> <p>8 Those are the two that I would recall off the</p> <p>9 top of my head.</p> <p>10 Q Can you recall any others, as you sit</p> <p>11 here today?</p> <p>12 A I can't -- I can't recall any others.</p> <p>13 I mean, as I say, if there are other assumptions,</p> <p>14 I'm sure they would be mentioned in the report.</p> <p>15 Q They would be identified as assumptions</p> <p>16 in the report?</p> <p>17 A Yes.</p> <p>18 Q Were you asked to make any assumptions</p> <p>19 by counsel for the class?</p> <p>20 A No.</p> <p>21 Q Did you make any assumptions about</p> <p>22 TWA's financial condition at the time of the</p> <p>23 American Airlines transaction?</p> <p>24 A No, I didn't.</p> <p>25 Q Did you do any analysis to understand</p>	<p style="text-align: right;">52</p> <p>1 in, what position they were able to hold, and how</p> <p>2 that related to the entire American Airlines</p> <p>3 operation.</p> <p>4 Q Did have any other sources of</p> <p>5 information on how the St. Louis fence worked?</p> <p>6 A There may have been other sources</p> <p>7 available in the testimony of pilots in the</p> <p>8 transcripts, but the things that I relied on most</p> <p>9 were the text of the agreement and the employment</p> <p>10 history of the pilots.</p> <p>11 Q So you testified that the only</p> <p>12 testimony that you reviewed concerning the liability</p> <p>13 phase of the case was Mr. Day's testimony; correct?</p> <p>14 A Uh-huh.</p> <p>15 Q Do you have any recollection of Mr. Day</p> <p>16 testifying about how the St. Louis fence would work?</p> <p>17 A I recall him testifying that there was</p> <p>18 going to be a St. Louis cell, but most of my -- of</p> <p>19 the information I got about the St. Louis fence was</p> <p>20 from the agreement and from the employment history.</p> <p>21 Q Okay. So if I'm trying to understand</p> <p>22 all the data that you relied on regarding how the</p> <p>23 St. Louis fence worked, it would be the text of</p> <p>24 Supplement CC, the employment data that you had</p> <p>25 access to, and is there anything else?</p>

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<p style="text-align: right;">53</p> <p>1 A Well, you mean, the data -- like</p> <p>2 seniority lists being very closely related to the</p> <p>3 employment history and the agreement. There --</p> <p>4 there may have been some early versions of a</p> <p>5 proposed fence in some of the -- some of the</p> <p>6 proposals that had been passed back and forth</p> <p>7 between the parties. But in terms of the fence that</p> <p>8 was finally implemented, it was the agreement and</p> <p>9 the employment history.</p> <p>10 Q So you referenced proposals that had</p> <p>11 been passed between the parties; correct?</p> <p>12 A Yes.</p> <p>13 Q Did you review proposals that were</p> <p>14 passed between the parties?</p> <p>15 A I did.</p> <p>16 Q And the proposal that you reviewed, are</p> <p>17 all of those reflected in your report?</p> <p>18 A Yes.</p> <p>19 Q And to the extent there is a proposal</p> <p>20 out there somewhere that's not cited in your report,</p> <p>21 can I assume that's something you didn't review?</p> <p>22 A Well, I -- I -- I only had the</p> <p>23 proposals that I mentioned in the report. So there</p> <p>24 may have been others out there, but I only have the</p> <p>25 ones that I had.</p>	<p style="text-align: right;">55</p> <p>1 pilots had.</p> <p>2 A That they actually had given the</p> <p>3 circumstances?</p> <p>4 Q Yes.</p> <p>5 A I assume they had a small amount, but</p> <p>6 I -- I really -- I'm not sure. You would have to be</p> <p>7 much more specific about what type of leverage</p> <p>8 you -- you would be referring to, and maybe you</p> <p>9 could ask me the question in a different way. Maybe</p> <p>10 I'm just --</p> <p>11 Q So I'm trying to understand -- I'm</p> <p>12 trying to differentiate circumstances in which you</p> <p>13 are offering an opinion or basing your -- your</p> <p>14 opinions on some piece of evidence.</p> <p>15 A Uh-huh.</p> <p>16 Q And so I'm -- I'm asking about</p> <p>17 assumptions that you made where you are just</p> <p>18 assuming facts to be a certain way.</p> <p>19 A Uh-huh.</p> <p>20 Q And so my question was, with respect to</p> <p>21 the leverage that the TWA pilots had in negotiating</p> <p>22 with the APA, did you make any assumptions about the</p> <p>23 amount of leverage they had in those negotiations?</p> <p>24 A I made some assumptions about the</p> <p>25 amount of leverage that, for instance, the Bond bill</p>
<p style="text-align: right;">54</p> <p>1 Q And did you have any source of</p> <p>2 information on proposals that were communicated</p> <p>3 orally?</p> <p>4 A No. Unless -- unless it was mentioned</p> <p>5 in Mike Day's testimony. But, you know, the</p> <p>6 proposals that I based most -- the proposals that I</p> <p>7 based my opinion on are the ones I had the text of</p> <p>8 or some recording of.</p> <p>9 Q Did you make any assumptions in your</p> <p>10 report about the pre-transaction career expectations</p> <p>11 of the TWA pilots?</p> <p>12 A No.</p> <p>13 Q Did you make any assumptions in your</p> <p>14 report about the pre-transaction career expectations</p> <p>15 of the American Airlines pilots?</p> <p>16 A No.</p> <p>17 Q Did you make any assumptions in your</p> <p>18 report about the leverage that the TWA pilots had in</p> <p>19 negotiating with the APA?</p> <p>20 A Well, I -- I think the whole report is</p> <p>21 about leverage that the TWA pilots could have had,</p> <p>22 so you would have to be a little more specific in</p> <p>23 your question.</p> <p>24 Q My -- my question is whether you made</p> <p>25 any assumptions about the leverage that the TWA</p>	<p style="text-align: right;">56</p> <p>1 had on the negotiation.</p> <p>2 Q And what assumptions did you make?</p> <p>3 A My assumption was that by employing</p> <p>4 that leverage, they were able to compel or convince</p> <p>5 the APA to change their position. That, I believe,</p> <p>6 is the only assumption I made in regards to the TWA</p> <p>7 pilots and leverage that they had.</p> <p>8 Q Did you make any assumptions about the</p> <p>9 leverage that the TWA pilots would have had, had</p> <p>10 ALPA conducted itself differently?</p> <p>11 A I did.</p> <p>12 Q And what assumptions did you make in</p> <p>13 that regard?</p> <p>14 A I assumed they would have had more</p> <p>15 leverage.</p> <p>16 Q Did you -- did you quantify the</p> <p>17 increased leverage that you thought they would have?</p> <p>18 A Yes.</p> <p>19 Q And how did you do that?</p> <p>20 A I went through -- I employed a</p> <p>21 methodology for basically decomposing the effect</p> <p>22 that each additional point of leverage would have</p> <p>23 had on the probabilities of achieving certain</p> <p>24 outcomes. So, for instance, the list that I call</p> <p>25 the damage model, I estimated the extent at which</p>

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<p style="text-align: right;">57</p> <p>1 each one of the points of leverage that ALPA could 2 have brought to bear would have had on increasing 3 the probability of that, meaning an outcome in 4 negotiations. 5 Q So that the probabilities that you 6 associate with each ALPA action, were those the 7 product of an assumption? 8 A Yes, they were. They were the product 9 of an assumption and the product of, you know, 10 coming up with a -- a conservative value for the 11 effect of each one of those actions. 12 Q And the probabilities that you 13 associate with each of those actions by ALPA, was 14 that something that was measured in any way? 15 A Yes. 16 Q And what did you do to measure the 17 probability that those actions would have a certain 18 affect? 19 A Well, what I did to measure the 20 probability was to analyze each of the actions and 21 -- as best as I could understand what the impact of 22 those actions would have been on the negotiation 23 process, in terms of, would it have been able to 24 shift the APA's perception of an issue, their 25 commitment to an issue, and so on. And then, for</p>	<p style="text-align: right;">59</p> <p>1 just described? 2 A Well, there was the basis -- there is 3 the -- I -- I think the Bond bill was probably the 4 most significant actual historical event that I had. 5 Q So -- and was there anything else? 6 A No. 7 Q Did you do anything to test whether 8 your probabilities were accurate? 9 A Other than mathematically? 10 Q Yeah. When you said that this event 11 has a 3 percent chance of influencing -- 12 A Uh-huh. 13 Q -- perception, for example, did you do 14 anything to test whether that was right? 15 A No. There -- there would be no way to 16 test that. 17 Q Are you aware of any methodology that's 18 generally accepted within your field of expertise 19 that allows you to determine what those particular 20 probabilities are in -- in any given situation? 21 A I'm -- I'm not aware of any. 22 Q Are you aware of the methodology that 23 you used to try and quantify the likelihood of an 24 agreement being reached being used at any time in 25 the past?</p>
<p style="text-align: right;">58</p> <p>1 each one of those types of impacts that the action 2 could have had on the negotiation, assigning a 3 value, a percentage, you know, one, two, three 4 percent probability that that particular action on 5 its own would have produced. 6 Q And so my -- my question is, for each 7 of those elements of your analysis, how did you know 8 that the probability was 3 percent, versus 9 .3 percent, versus 30 percent? 10 A Well, it was based largely on the 11 experience of the Bond bill and the impact that it 12 had on the negotiation. 13 Q And what did the Bond bill tell you 14 about what the specific measurement of each -- each 15 action was? 16 A Well, if I took the Bond bill at being 17 one action and, you know, how it would have affected 18 the negotiation a number of ways and it moved the 19 APA's position a certain amount, I then went 20 backward and said if that Bond bill could have done 21 that, then if we assume a significantly smaller 22 impact of these other actions, what would the 23 outcome likely have been? 24 Q Did you have any other basis for -- for 25 assigning those probabilities other than what you</p>	<p style="text-align: right;">60</p> <p>1 A Well, the article that I cited written 2 by -- by I believe it was Katia Sycara, who has a 3 computer model developed on -- developed to assess 4 the impact of negotiation, has a framework that is 5 used, that I actually adopted her framework for 6 analyzing the impact of particular arguments on a 7 negotiation, so that's -- 8 Q Does Professor Sycara's framework 9 involve attempting to quantify the likelihood of an 10 agreement being reached under a particular set of 11 circumstances? 12 A It does attempt to test whether 13 particular arguments will be successful in reaching 14 an agreement. 15 Q Could you answer my question? 16 A Okay. Well, can I ask you to ask your 17 question again? 18 Q Sure. Does Professor Sycara's 19 framework involve an effort to quantify the 20 likelihood of an agreement being reached? 21 A Well, I believe her work could be read 22 that way. I don't think it's what the model was 23 designed to do, but, I mean, to the extent that it 24 is attempting to assess the likelihood that a 25 particular argument is likely to be persuasive --</p>

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<p style="text-align: right;">61</p> <p>1 Q Does she assign probabilities anywhere</p> <p>2 in her article to the likelihood of an agreement</p> <p>3 being reached?</p> <p>4 A Well, as I understand, her model, what</p> <p>5 it does is it assigns weights to different aspects</p> <p>6 of persuasive arguments.</p> <p>7 Q So my question is about specifically</p> <p>8 whether Professor Sycara in her article, anywhere</p> <p>9 else in her work, purports to come up with a</p> <p>10 framework for quantifying the likelihood of an</p> <p>11 agreement being reached.</p> <p>12 MS. RODRIGUEZ: Objection.</p> <p>13 THE WITNESS: I think that would</p> <p>14 mischaracterize her work.</p> <p>15 BY MR. TOAL:</p> <p>16 Q Are -- are you aware of her doing that</p> <p>17 anywhere in her work?</p> <p>18 MS. RODRIGUEZ: Objection.</p> <p>19 THE WITNESS: No. No, I'm not.</p> <p>20 BY MR. TOAL:</p> <p>21 Q So my question to you originally was,</p> <p>22 are you aware of the methodology that you used to --</p> <p>23 to attempt to quantify the likelihood of an</p> <p>24 agreement being reached being used anywhere</p> <p>25 previously?</p>	<p style="text-align: right;">63</p> <p>1 article that you cited, are you aware of anywhere</p> <p>2 else in Professor Sycara's work where she presents</p> <p>3 her framework as a methodology for quantifying the</p> <p>4 likelihood of an agreement being reached?</p> <p>5 A I'm not aware of any other work she's</p> <p>6 done, you know, in that regard.</p> <p>7 Q So the answer would be no, you are not</p> <p>8 aware --</p> <p>9 A The answer would be no.</p> <p>10 Q Do you know what Professor Sycara's</p> <p>11 background is?</p> <p>12 A No, I do not.</p> <p>13 Q Do you know what her area of academic</p> <p>14 specialty is?</p> <p>15 A I do not.</p> <p>16 Q Would that have been relevant to your</p> <p>17 work to know the field in which she specializes?</p> <p>18 A Her article was in a peer reviewed</p> <p>19 journal. I can't recall which one. I believed what</p> <p>20 the -- what she had done with her persuader model</p> <p>21 had some application here, and so --</p> <p>22 Q Did you use the persuader model?</p> <p>23 MS. RODRIGUEZ: I'm going to ask -- and</p> <p>24 you've -- you've done this a couple times. You</p> <p>25 interrupt him in the middle of his answer. So I'm</p>
<p style="text-align: right;">62</p> <p>1 MS. RODRIGUEZ: Objection.</p> <p>2 THE WITNESS: No. Other than in</p> <p>3 Sycara's work, you know, and the extent to which you</p> <p>4 can see the -- the persuader model that she</p> <p>5 developed being similar to the exercise here. But,</p> <p>6 as I said, I think that would mischaracterize her</p> <p>7 work.</p> <p>8 BY MR. TOAL:</p> <p>9 Q Okay. I thought we just established</p> <p>10 that you agree that Professor Sycara had not</p> <p>11 attempted to quantify anywhere in her work the</p> <p>12 likelihood of an agreement being reached; is that</p> <p>13 correct?</p> <p>14 MS. RODRIGUEZ: Objection.</p> <p>15 THE WITNESS: No.</p> <p>16 BY MR. TOAL:</p> <p>17 Q That's not correct? You --</p> <p>18 A Okay. Let's -- let's ask the question</p> <p>19 one last time so we get a clear answer.</p> <p>20 Q Yeah. So is there anywhere in</p> <p>21 Professor Sycara's article that you cited where she</p> <p>22 attempts to quantify the likelihood of an agreement</p> <p>23 being reached?</p> <p>24 A No. I don't believe she does.</p> <p>25 Q Okay. Setting aside the particular</p>	<p style="text-align: right;">64</p> <p>1 going to ask you to please wait until he finishes</p> <p>2 his answer before you jump in with your next</p> <p>3 question.</p> <p>4 BY MR. TOAL:</p> <p>5 Q I'm happy to wait. You paused and</p> <p>6 threw me off. I thought you were done.</p> <p>7 Did you have something else to add?</p> <p>8 A Let's -- let's start back with the</p> <p>9 question again.</p> <p>10 Q Sure. So the last question is, would</p> <p>11 it have been relevant to your work to know the area</p> <p>12 in which Professor Sycara specializes?</p> <p>13 A I mean, I believe her background is in</p> <p>14 computer science, so to the extent that it's</p> <p>15 relevant, I think it was considered.</p> <p>16 Q Okay. Because I thought you told me</p> <p>17 previously you didn't know what area she specialized</p> <p>18 in. Is that correct?</p> <p>19 A I mean, the article was specifically --</p> <p>20 the article was focused on her work with the</p> <p>21 persuader model, how it worked and what it did. And</p> <p>22 so, that being a computer program, I assume that</p> <p>23 she's got some kind of computer science background.</p> <p>24 But her area of specialty outside of this article, I</p> <p>25 wouldn't know.</p>

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<p style="text-align: right;">65</p> <p>1 Q So is it -- is it fair to say that you</p> <p>2 assumed that she had a background in computer</p> <p>3 science, but that you were uncertain of what her</p> <p>4 background is?</p> <p>5 A Yes.</p> <p>6 Q So you mention that Professor Sycara</p> <p>7 used something called a persuader model; correct?</p> <p>8 A I believe she developed a thing called</p> <p>9 a persuader model; yes.</p> <p>10 Q And that's what she describes in her</p> <p>11 article; correct?</p> <p>12 A That's correct.</p> <p>13 Q And how did she describe the persuader</p> <p>14 model being used in her article?</p> <p>15 A To assess the -- the strength of -- the</p> <p>16 persuader model was attempted to reproduce</p> <p>17 negotiations and test the strength of various forms</p> <p>18 of argumentation.</p> <p>19 Q Wasn't the persuader model used in</p> <p>20 order to generate arguments that a mediator could</p> <p>21 use with a labor union or a company?</p> <p>22 A As well, yes. But it had a -- it had</p> <p>23 a -- it had a -- obviously, it had a library of</p> <p>24 arguments that it had to draw those arguments from.</p> <p>25 And so, in particular context, it had to --</p>	<p style="text-align: right;">67</p> <p>1 correct.</p> <p>2 Q And can you show me where in this</p> <p>3 article Professor -- Professor Sycara says that her</p> <p>4 persuader model has anything to do with evaluating</p> <p>5 the strength of arguments?</p> <p>6 MS. RODRIGUEZ: Object to form. It</p> <p>7 mischaracterizes his testimony.</p> <p>8 BY MR. TOAL:</p> <p>9 Q Is that what you testified to</p> <p>10 previously?</p> <p>11 A Sorry, what was the --</p> <p>12 Q Maybe I misunderstood, but did you</p> <p>13 testify previously that your understanding of the</p> <p>14 persuader model was that it had some connection to</p> <p>15 evaluating the strength of arguments?</p> <p>16 A Yes.</p> <p>17 Q That's your understanding?</p> <p>18 A I believe I said that, and my</p> <p>19 understanding was that's how the model works.</p> <p>20 Q And so can you show me where in the</p> <p>21 article Professor Sycara says that the persuader</p> <p>22 model can be used to assess the strength of</p> <p>23 arguments?</p> <p>24 A The policy that the persuader uses to</p> <p>25 generate the weakest, least convincing argument</p>
<p style="text-align: right;">66</p> <p>1 (Salamat-6 Article entitled</p> <p>2 Persuasive Argumentation in Negotiation by</p> <p>3 Katia Sycara marked for identification.)</p> <p>4 BY MR. TOAL:</p> <p>5 Q All right. Let me mark as Salamat</p> <p>6 Exhibit-6, a copy of an article entitled, Persuasive</p> <p>7 Argumentation in Negotiation by Katia Sycara.</p> <p>8 All right. And can you let me know if you've</p> <p>9 seen this document previously?</p> <p>10 A Yes.</p> <p>11 Q And is this the article that you cite</p> <p>12 in your report?</p> <p>13 A Yes.</p> <p>14 Q And you rely heavily on this -- this</p> <p>15 framework; correct? Is that correct?</p> <p>16 MS. RODRIGUEZ: Objection.</p> <p>17 THE WITNESS: I think heavily would be</p> <p>18 a mischaracterization, but I do rely on the</p> <p>19 framework.</p> <p>20 BY MR. TOAL:</p> <p>21 Q So this framework is the sole basis for</p> <p>22 your attempted quantification of the likelihood of</p> <p>23 an agreement being reached; correct?</p> <p>24 A Yeah. It -- it is the only framework</p> <p>25 for quantification that I used in the report, that's</p>	<p style="text-align: right;">68</p> <p>1 first, reserving strong arrangements for situations</p> <p>2 where weak ones have been rejected, the hierarchy of</p> <p>3 convincing power of arguments ranks the strength of</p> <p>4 an argument for the labor domain.</p> <p>5 So in that statement, she is saying what she</p> <p>6 is doing is assessing the strength of a particular</p> <p>7 argument given the context in which the argument is</p> <p>8 being presented.</p> <p>9 Q Does she say -- does she say the model</p> <p>10 makes the determination about the strength of the</p> <p>11 argument?</p> <p>12 A Well, what she says is the input to the</p> <p>13 argumentation process is the persuadee's position on</p> <p>14 the issue. I mean, the specifics of how the -- the</p> <p>15 software actually works, I don't believe is -- is --</p> <p>16 is laid out in here. But --</p> <p>17 Q Let me ask you --</p> <p>18 A -- given that what it is doing is</p> <p>19 assigning an importance or a strength to a</p> <p>20 particular argument, I assume it has to be able to</p> <p>21 because otherwise it wouldn't be able to generate a</p> <p>22 weak argument first receiving a strong argument for</p> <p>23 situations where weak ones have been rejected. It</p> <p>24 has to be able to assess the arguments' strengths.</p> <p>25 Q Did you do anything to attempt to</p>

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<p style="text-align: right;">69</p> <p>1 confirm your understanding about the use of the 2 persuader model to evaluate the strength of 3 arguments? 4 A No, I did not. 5 Q Do you know whether the hierarchy of 6 arguments, according to their persuasive power, is 7 an input to the model or an output of the model? 8 A Well, let's go through and look -- see 9 what she says. 10 Q Can you state for the record which page 11 you are reviewing? 12 A Right now I'm on 226. 13 And my understanding is that these arguments 14 are all inputs into the model. 15 Q So if your -- your understanding is 16 that these arguments are inputs to the model -- 17 A Yeah. 18 Q -- do you have any basis for saying 19 that one of the outputs or uses of the model is to 20 evaluate the strength of arguments? 21 A I'm sorry. Could you -- could you 22 repeat the question? 23 Q Yeah. So if your understanding is that 24 the arguments are inputs to the model, do you have 25 any basis for saying that one of the uses of the</p>	<p style="text-align: right;">71</p> <p>1 further compromises? 2 A Not their willingness, but their -- 3 their -- I make assumptions about what would happen 4 given more pressure. You can never speak about 5 anybody's willingness until they're in a situation 6 where that will has expressed itself, so -- 7 Q But you do make assumptions, if 8 circumstances had been different, what the APA's 9 willingness to make further concessions would have 10 been; correct? 11 A That's correct. 12 MS. RODRIGUEZ: I'm sorry, can you read 13 back that last question? 14 (The court reporter read back the 15 pending question as follows: 16 "Question: But you do make 17 assumptions, if circumstances had been 18 different, what the APA's willingness to make 19 further concessions would have been; 20 correct?") 21 BY MR. TOAL: 22 Q And do you make assumptions in your 23 report about how the APA would have responded to any 24 of the proposed actions by ALPA that you list in 25 your report?</p>
<p style="text-align: right;">70</p> <p>1 model is to evaluate the strengths -- the strength 2 of arguments? 3 A I -- I believe that's what her software 4 does. 5 Q As an output of the model? 6 A I believe that that would be an output 7 of the model. 8 Q Did you do anything to confirm that 9 understanding? 10 A No, I did not. 11 Q Did you use the persuader software 12 model in connection with your work? 13 A No. I just used the framework that she 14 outlined. 15 THE WITNESS: Would it be okay to take 16 a break? 17 MS. RODRIGUEZ: Sure. 18 VIDEO SPECIALIST: The time is now 19 10:54 and this ends this number one. 20 (Brief recess.) 21 VIDEO SPECIALIST: The time is now 22 11:07 and we are back on the video record. 23 BY MR. TOAL: 24 Q Mr. Salamat, in your report do you make 25 assumptions about the APA's willingness to make</p>	<p style="text-align: right;">72</p> <p>1 A I -- I assume they would have 2 responded. 3 Q And in what manner do you assume they 4 would respond? 5 A I assume that given more pressure, that 6 they would have responded in a way that was more 7 fair. 8 Q To whom? 9 A To the TWA pilots. 10 Q And so when you say more fair, you mean 11 more favorable to the TWA pilots; correct? 12 A I mean more fair and more favorable to 13 the TWA pilots, yes. 14 Q And do you consider yourself an expert 15 on fairness? 16 A I do not consider myself an expert on 17 fairness. I do consider myself an expert on, you 18 know, assessing whether particular seniority 19 integrations are more or less fair to a particular 20 group. 21 Q And by virtue of what experience do you 22 have expertise on evaluating whether a particular 23 seniority integration is fair to a particular group? 24 A I spent the last twelve years analyzing 25 seniority integrations and their impact on various</p>

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<p style="text-align: right;">73</p> <p>1 groups.</p> <p>2 Q And what criteria do you use to assess</p> <p>3 whether a seniority integration is fair?</p> <p>4 A A variety. Whether one group is able</p> <p>5 to access the work that it brought to the merger is</p> <p>6 a common one. Whether people are able to keep their</p> <p>7 jobs is generally the measure. Everything else</p> <p>8 being some form of variation of that.</p> <p>9 Q Have you seen in your work that, in</p> <p>10 evaluating the fairness of seniority integration</p> <p>11 lists that people look to, whether the integrated</p> <p>12 list preserves the pre-transaction career</p> <p>13 expectations of each pilot group?</p> <p>14 A That -- that would be common in -- in</p> <p>15 mergers that people do that, yes.</p> <p>16 Q And is that one of the criteria you</p> <p>17 look to in assessing whether a seniority integration</p> <p>18 list is fair?</p> <p>19 A Not in this particular case, no.</p> <p>20 Q Why not in this particular case?</p> <p>21 A Because in this case, we weren't</p> <p>22 looking at what people's premerger expectations</p> <p>23 were.</p> <p>24 Q Why not?</p> <p>25 A Because we were looking at what the</p>	<p style="text-align: right;">75</p> <p>1 back and look and see what the history would have</p> <p>2 been under a different seniority integration.</p> <p>3 Q Isn't it the case in any airline</p> <p>4 combination that the airline pilots will be combined</p> <p>5 and the question is what their pre-transaction</p> <p>6 career expectations were?</p> <p>7 MS. RODRIGUEZ: Objection.</p> <p>8 THE WITNESS: If you are arguing, you</p> <p>9 know, what a seniority integration should be, you</p> <p>10 might. But I wasn't arguing what a seniority</p> <p>11 integration should have been. I wasn't arguing what</p> <p>12 seniority integration would have been fair. I have</p> <p>13 only argued, you know, I have only estimated what a</p> <p>14 seniority integration that would have been income</p> <p>15 optimal would have been, what I believe would have</p> <p>16 been likely under other -- other sets of</p> <p>17 circumstances.</p> <p>18 BY MR. TOAL:</p> <p>19 Q I'm sorry. You say you estimated what</p> <p>20 a seniority integration would have been if it was</p> <p>21 income optimal? Is that what your testimony --</p> <p>22 A If it was income optimal.</p> <p>23 Q That's what you were estimating here?</p> <p>24 A I'm sorry?</p> <p>25 Q Is that what you were estimating here?</p>
<p style="text-align: right;">74</p> <p>1 impact would have been under different lists at</p> <p>2 American Airlines, a merged carrier, and not what</p> <p>3 expectations they necessarily had going into the</p> <p>4 merger. The only thing we looked at in terms of</p> <p>5 that was what number of jobs they had going into the</p> <p>6 merger. We didn't do any forecasts on -- on what</p> <p>7 would have happened had there not been a merger.</p> <p>8 That's what you would typically do in a -- in a</p> <p>9 seniority arbitration.</p> <p>10 Q And did you not think that criteria was</p> <p>11 relevant in this particular case?</p> <p>12 A What the TWA pilots' un-merged career</p> <p>13 expectations would have been?</p> <p>14 Q Pre-transaction career expectations of</p> <p>15 each pilot group.</p> <p>16 A I didn't see how that would be</p> <p>17 particularly relevant here.</p> <p>18 Q Why -- why didn't you think that would</p> <p>19 be relevant here but relevant in other situations?</p> <p>20 A Well, because here the merger is a</p> <p>21 given. In other situations, not necessarily.</p> <p>22 Q What do you mean by that?</p> <p>23 A Well, in this case the two carriers did</p> <p>24 merge. They were merged under a particular</p> <p>25 seniority integration, and so the exercise was to go</p>	<p style="text-align: right;">76</p> <p>1 A One of the things that I estimated</p> <p>2 here.</p> <p>3 Q And which list reflects a list that</p> <p>4 would have been income optimal?</p> <p>5 A I believe it is called the I optimal</p> <p>6 list. It might have also been referred to as the</p> <p>7 fairness list.</p> <p>8 Q And what does the Salamat list</p> <p>9 represent?</p> <p>10 A The Salamat list represents my best</p> <p>11 estimate at what list would have been achieved in</p> <p>12 negotiation had ALPA deployed all of the strategies</p> <p>13 that it had available to it would have been.</p> <p>14 Q And you made that determination without</p> <p>15 assessing the negotiating position of the APA; is</p> <p>16 that correct?</p> <p>17 A Well, I -- I don't believe I said that,</p> <p>18 but --</p> <p>19 Q Well, that's my question. Did you make</p> <p>20 that assessment -- did you take into consideration</p> <p>21 the negotiating position of the APA when developing</p> <p>22 the Salamat list?</p> <p>23 A I did.</p> <p>24 Q In what ways did you take into</p> <p>25 consideration the negotiating position of the APA?</p>

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<p style="text-align: right;">77</p> <p>1 A The proposals that they had passed, the 2 response to the TWA's pilots proposal. 3 Q And other than that, did you take into 4 consideration any other information concerning the 5 APA's position? 6 A I think those would be the main things 7 I relied on. There -- there was also, you know, 8 characterizations of the APA in their negotiating 9 position that was made in -- in closing arguments in 10 the -- the trial. 11 Q Anything other than that? 12 A No. Just generally the record. 13 Q And what characterizations of the APA 14 were you -- were you referring to that were made in 15 closing arguments? 16 A Peter Fram talked about how difficult 17 it was to negotiate with the APA from the point of 18 view of the CEO of American Airlines, Compton, I 19 believe. 20 In Mike Day's testimony, he talked about how 21 they wouldn't respond to proposals that they had 22 made and were disinclined to negotiate in any 23 meaningful way during their facilitated 24 negotiations. 25 Q And are you aware of any -- withdrawn.</p>	<p style="text-align: right;">79</p> <p>1 information. 2 Q Did you make any assumptions in your 3 report about the likelihood that American Airlines 4 would decide to walk away from the proposed 5 transaction with TWA? 6 A The likelihood that American Airlines 7 would have walked away from the -- no. I don't 8 believe I made any assumptions about that. 9 Q Did you have any information about the 10 APA's view about TWA's financial condition at the 11 time of the transaction? 12 A Yes. 13 Q And what information did you have? 14 A In their response to the TWA's rightful 15 place proposal, they characterized TWA's financial 16 position as -- as dismal at best. 17 Q And did you have any information about 18 the APA's view of the pre-transaction career 19 expectations of the TWA's pilots? 20 A I believe they didn't believe them to 21 be particularly desirable. 22 Q Do you have an understanding that the 23 APA believed the TWA pilots to have poor career 24 expectations prior to the transaction? 25 A Yes.</p>
<p style="text-align: right;">78</p> <p>1 Did you rely on any information about what the 2 APA would have done had ALPA taken any of the 3 actions that you describe in your report? 4 A I don't know what information I could 5 have relied on because ALPA didn't take those 6 actions. 7 Q And did you have any information on 8 what ALPA would have done or what they said they 9 would have done had any of these actions been taken? 10 MS. RODRIGUEZ: Objection to form. 11 ALPA? 12 BY MR. TOAL: 13 Q I'm sorry. Did you have any 14 information on what the APA would have done or what 15 they said they would have done had any of the ALPA 16 actions that you describe in your report been taken? 17 MS. RODRIGUEZ: Objection. 18 THE WITNESS: I -- I don't recall 19 coming across any information saying what the APA 20 would have or would not have done given any specific 21 action by ALPA. 22 BY MR. TOAL: 23 Q So -- so is the answer to my question 24 that you didn't have any such information? 25 A I don't believe I had any such</p>	<p style="text-align: right;">80</p> <p>1 Q Did you have any information suggesting 2 to you that one of the factors the APA was relying 3 upon in proposing seniority integration was what the 4 pre--- pre-transaction expectations of each pilot 5 group were? 6 A Yes. 7 Q Did you have an understanding that the 8 TWA MEC was also, in its proposals, relying on its 9 views of what the pre-transaction career 10 expectations of both pilot groups were? 11 MS. RODRIGUEZ: Objection. 12 THE WITNESS: I don't believe I've seen 13 any comprehensive document where -- where the TWA 14 MEC characterized the financial condition of -- of 15 TWA. 16 BY MR. TOAL: 17 Q Are you aware of any information 18 suggesting that the TWA MEC agreed that any 19 integrated list should preserve the pre-transaction 20 career expectations of each pilot group? 21 A Well, to the -- to the extent that the 22 MEC's point of view is reflected in the Tannen 23 proposal, I assume they believed they had premerger 24 career expectations. But other than in that form, I 25 don't -- I don't know that I've seen any documents</p>

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<p style="text-align: right;">81</p> <p>1 that say what the MEC thought the future without an 2 American Airlines merger would have been.</p> <p>3 Q But I'm not asking you what the TWA MEC 4 thought TWA's financial condition was. I'm asking 5 whether you have any information indicating to you 6 that the TWA MEC believed it was appropriate to take 7 into account the pre-transaction career expectations 8 of each pilot group in constructing a merged 9 seniority list.</p> <p>10 A To the extent that that is reflected in 11 the Tannen rightful place proposal, I believe it is.</p> <p>12 Q Did you do anything to test whether the 13 lists that you set forth in your report succeed in 14 preserving the pre-transaction career expectations 15 of each pilot group?</p> <p>16 A No, I did no work on the premerger 17 trans -- the un-merged expectations of either of 18 the pilot groups.</p> <p>19 Q And you considered that factor 20 irrelevant for your analysis; correct?</p> <p>21 A Yes. I considered it irrelevant.</p> <p>22 Q And the reason you considered it 23 irrelevant was because it was a given at -- at that 24 stage that there was going to be a transaction; is 25 that right?</p>	<p style="text-align: right;">83</p> <p>1 pre-transaction career expectations is relevant in 2 other cases and why you regarded it as irrelevant in 3 this case, and I thought you testified previously 4 that in this case the merger was a foregone 5 conclusion. Was that your testimony?</p> <p>6 A Well, in this case we were looking at 7 the pilots' seniority under a given merger versus 8 what their -- what -- what their careers would have 9 been under a different seniority list in the same 10 merger, not in an un-merged or a premerger airline 11 would have been, so --</p> <p>12 Q How does that differentiate this case 13 from any other case in which arbitrators or others 14 take into account the pre-transaction career 15 expectations of each pilot group?</p> <p>16 A How does -- how does this case differ?</p> <p>17 Q How does that aspect of this case that 18 you regarded a transaction as being a foregone 19 conclusion at the time they were discussing 20 seniority integration, how does that differentiate 21 it from any other case in which pre-transaction 22 expectations of the pilot groups are taken into 23 consideration?</p> <p>24 A Well, perhaps I misspoke when I said 25 that earlier because, I mean, I don't think that it</p>
<p style="text-align: right;">82</p> <p>1 A What I took as a given was how many 2 positions each pilot had at the point when the two 3 airlines were merged. Whether they would have 4 had -- the way in which we analyze premerger 5 expectations is to assume that the future is going 6 to remain more or less the same as it is at the 7 point the two airlines are merged, and so I could 8 theoretically have compared TWA's premerger 9 expectations to their career under American Airlines 10 Supplement CC list, but I didn't really see that 11 that would tell us anything because I wasn't 12 comparing their careers at American to their careers 13 at a stand-alone-TWA, or a TWA merged with another 14 airline, or a TWA under a different management.</p> <p>15 Q So what I was trying to understand 16 is --</p> <p>17 MS. RODRIGUEZ: Again, I'm going to ask 18 you -- he was not finished. You -- you step on his 19 last words.</p> <p>20 MR. TOAL: He paused. He threw me off. 21 So were you done with your answer?</p> <p>22 THE WITNESS: Let's just go on, yeah.</p> <p>23 BY MR. TOAL:</p> <p>24 Q I was trying to understand why you 25 seemed to acknowledge that consideration of</p>	<p style="text-align: right;">84</p> <p>1 does actually differentiate this case from the 2 others. What it differentiates is more of a 3 comparing. In those other cases, you know, where -- 4 where, for instance, I'm working with a -- with a 5 group that's going into a seniority arbitration, we 6 are comparing what their career under the merged 7 carrier will be to what their standalone career 8 expectations were. So to the extent that they 9 brought X number of jobs with them, are they able to 10 continue to have access to those jobs under this 11 list in this merged airline? That's not the 12 analysis that I'm doing in this case. I'm not 13 comparing what -- whether their careers at American 14 are superior to or inferior to the careers that they 15 would have had at TWA as a standalone entity. 16 That's -- that's -- because I'm -- I'm -- we 17 wouldn't be arguing at an arbitration about what we 18 think the seniority integration should be.</p> <p>19 Q One of the things you are doing is 20 trying to assess whether the APA would have been 21 willing, under different circumstances, to make 22 additional concessions; correct?</p> <p>23 A That's correct.</p> <p>24 Q And you knew that the APA regarded the 25 pre-transaction career expectations as -- as a</p>

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<p style="text-align: right;">85</p> <p>1 factor in determining what seniority integration 2 would be appropriate; correct? 3 A In every merger there is one group that 4 thinks the other groups has dismal career 5 expectations. 6 Q So why would you regard the 7 pre-transaction career expectations of the pilot 8 groups as irrelevant when it was one of the factors 9 that the APA was taking into consideration? 10 A Because at the end of the day the 11 premerger career expectations of pilots matters to 12 the extent that they brought X number of jobs with 13 them and not typically where -- what may or may not 14 happen with, you know, the company absent the 15 merger. That stuff is argued. In my experience, it 16 doesn't play any significant role in the outcome of 17 seniority integrations. 18 Q And that's based on what experience? 19 A Well, that's based on a review of the 20 seniority awards going back some years. 21 Q And you haven't seen seniority awards 22 in which the arbitrators analyze the pre-transaction 23 career expectations of the pilot groups on -- on a 24 standalone basis? 25 A They do discuss it, certainly.</p>	<p style="text-align: right;">87</p> <p>1 bankruptcy. Whether it was or was not operating. 2 Q Anything else? 3 A I think those would be the most common 4 ones. 5 Q What about the -- the equipment that 6 each airline operated? 7 A Well, when I said the job that they 8 brought to the merger, that's what I mean. 9 Q And what do you know about TWA's 10 financial condition at the time of the American 11 Airline transaction? 12 A They were in bankruptcy. It was not 13 healthy. But as I said, I didn't -- I did not 14 investigate or analyze their financial situation. 15 Q Is that something you have the 16 expertise to do? 17 A To assess their financial situation? 18 Q Yes. 19 A No. 20 Q Did you undertake any analysis of the 21 equipment that TWA was operating prior to the time 22 of the transaction? 23 A Other than to see how many positions 24 they had on different pieces of equipment, no. I 25 don't know anything about, you know, the age or make</p>
<p style="text-align: right;">86</p> <p>1 Q Have you seen situations in which 2 arbitrators say that's the predominant factor in 3 evaluating a seniority arbitration? 4 A In arbitrations where you are dealing 5 with a liquidated carrier, not a liquidated carrier, 6 but a carrier that ceased to function, I've seen 7 that. 8 Q Have you seen it in other situations? 9 A Where a particular amount of weight was 10 placed on what? You would have to be more specific. 11 Q On the pre-transaction career 12 expectations of each pilot group. 13 A Well, they are always based on the 14 premerger -- premerger career expectations in some 15 manner. 16 Q How -- how do you define 17 pre-transaction career expectations? What's 18 included in that assessment? 19 A The amount of work that the pilot group 20 brought to the merger, how old that pilot group is, 21 whether the airline had been growing or shrinking, 22 whether it had aircraft orders. 23 Q Anything else? 24 A The financial health of the company. 25 Whether the -- whether the company was in or out of</p>	<p style="text-align: right;">88</p> <p>1 of -- of, you know, the particular aircraft they 2 were flying. 3 Q Did you do anything to undertake an 4 analysis of the number of pilot jobs that TWA would 5 be bringing to a merged entity? 6 A Some. 7 Q What did you do in that regard? 8 A I looked at how many pilot positions on 9 those -- those pieces of equipment were left as of, 10 I guess, 18 months after the merger. 11 Q Did you do anything else? 12 A No. 13 Q Did you undertake any analysis of TWA's 14 viability as a going concern on a standalone basis? 15 A No, I did not. 16 Q Is that something that would be 17 relevant to the pre-transaction career expectations 18 of the TWA pilots? 19 A No. To the extent that they were still 20 operating as of the merger, no. 21 Q What about if they were expected to 22 stop operating within a matter of months? Would 23 that affect their pre-transaction career 24 expectations? 25 A Not in my opinion, no.</p>

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<p style="text-align: right;">89</p> <p>1 Q Is -- is that something that, say, you</p> <p>2 are seeking to offer as an expert opinion?</p> <p>3 A That's something I'm seeking to offer</p> <p>4 as -- as what I know to be historical fact.</p> <p>5 Q Well, what is it that you know to be</p> <p>6 historical fact?</p> <p>7 A Well, for instance, when Canadian</p> <p>8 Airline and Air Canada merged, Canadian Airline was</p> <p>9 counting their cash in terms of hours. You know,</p> <p>10 the Air Canada pilots, you know, said this was proof</p> <p>11 that they had no career expectations. But at the</p> <p>12 end of the day, it mattered very little in their</p> <p>13 seniority integration.</p> <p>14 So there has been lots of situations where</p> <p>15 there was a merger between a bankrupt carrier which</p> <p>16 the other side claimed was, you know, within minutes</p> <p>17 of expiring, but yet ended up playing very little</p> <p>18 role in the actual outcome of the seniority</p> <p>19 integration.</p> <p>20 Q Do you know in that case what the</p> <p>21 arbitrator concluded with respect to the viability</p> <p>22 of -- of the acquired airline?</p> <p>23 MS. RODRIGUEZ: I object to the form.</p> <p>24 THE WITNESS: Yeah, you will have to be</p> <p>25 a little more specific because one arbitrator did</p>	<p style="text-align: right;">91</p> <p>1 acquired airline is not relevant to the</p> <p>2 pre-transaction career expectations of the acquired</p> <p>3 pilots?</p> <p>4 A I wouldn't say it is irrelevant, but it</p> <p>5 is of limited relevance.</p> <p>6 Q And other than the Air Canada case that</p> <p>7 you mentioned, what other support do you have for</p> <p>8 that statement?</p> <p>9 MS. RODRIGUEZ: I object to the form.</p> <p>10 THE WITNESS: Support for what</p> <p>11 statement?</p> <p>12 BY MR. TOAL:</p> <p>13 Q The statement that the pre- -- the</p> <p>14 viability of the acquired airline is of limited</p> <p>15 relevance in assessing the pre-transaction career</p> <p>16 expectations of the acquired pilots.</p> <p>17 A Well, I mean, I think any -- any award</p> <p>18 you look at where one of the carriers is a bankrupt</p> <p>19 airline, I will now use -- use America</p> <p>20 West/USAirways, USAirways argued strenuously through</p> <p>21 its -- through the process that USAir -- America</p> <p>22 West argued strenuously that -- that USAirways had</p> <p>23 no hope of ever flying again. They were, you know,</p> <p>24 a doomed airline. They were a failed carrier. And,</p> <p>25 therefore, their pilots had no career expectations</p>
<p style="text-align: right;">90</p> <p>1 conclude that it had -- it was -- it was a</p> <p>2 reasonable factor to consider and that award ended</p> <p>3 up being overturned. So I would have to say yes,</p> <p>4 someone thought so, but at the end of the day they</p> <p>5 were proven that putting any undue influence on --</p> <p>6 on the economics of Canadian Airline was incorrect,</p> <p>7 so --</p> <p>8 BY MR. TOAL:</p> <p>9 Q And what court overturned that</p> <p>10 arbitration award?</p> <p>11 A The Canadian Industrial Relations</p> <p>12 Board.</p> <p>13 Q And on what basis was that award</p> <p>14 overturned?</p> <p>15 A The played -- the arbitrator placed</p> <p>16 undue influence -- placed undue weight on the</p> <p>17 economics of Canadian Airlines.</p> <p>18 Q And are you aware of any situation in</p> <p>19 the United States in which any arbitration award has</p> <p>20 been overturned for the reliance that was placed on</p> <p>21 the financial condition of the acquired carrier?</p> <p>22 A I'm not aware of any, no.</p> <p>23 Q And other than the Air Canada situation</p> <p>24 that you described, are you aware of any other</p> <p>25 support for your view that the viability of the</p>	<p style="text-align: right;">92</p> <p>1 at all, and that this merger had saved them.</p> <p>2 Obviously, USAirways pilots argued that no, no, no,</p> <p>3 no. Of course, we have -- we have all kinds of</p> <p>4 great things that are going to happen to this</p> <p>5 airline without this merger. But at the end of the</p> <p>6 day, the arbitrator just looked at the number of the</p> <p>7 jobs that each carrier had -- each -- each pilot</p> <p>8 group brought to the merger and did the integration</p> <p>9 on that basis. You know, did he give anyone a</p> <p>10 premium because their expectations were more, you</p> <p>11 know, that their expectations were better because of</p> <p>12 the economic health of the company? You know, it is</p> <p>13 arguable. But he certainly didn't appear to</p> <p>14 discount anybody's seniority on the basis of</p> <p>15 economics.</p> <p>16 Q But the arbitrator in that case didn't</p> <p>17 agree with America West's arguments that USAir was</p> <p>18 on the verge of liquidation, did he?</p> <p>19 A He did not.</p> <p>20 Q So my question is, whether you're aware</p> <p>21 of any support, other than the Air Canada case that</p> <p>22 you mentioned, for the proposition that the</p> <p>23 viability of the acquired airline is given little</p> <p>24 weight in assessing the pre-transaction career</p> <p>25 expectations of the acquired pilot group?</p>

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<p style="text-align: right;">93</p> <p>1 MS. RODRIGUEZ: Objection.</p> <p>2 THE WITNESS: If we look at the</p> <p>3 placement -- would it be all right if I referred to</p> <p>4 my report?</p> <p>5 BY MR. TOAL:</p> <p>6 Q Sure.</p> <p>7 A All right. Let's do that. I just want</p> <p>8 to make sure I'm citing the right group from the</p> <p>9 right merger.</p> <p>10 MS. RODRIGUEZ: More water?</p> <p>11 THE WITNESS: You know, I'm probably</p> <p>12 drinking too much because I'm going to need another</p> <p>13 break in a minute, but --</p> <p>14 Yeah. It was Ichan in Republic Frontier</p> <p>15 Midwest Linx that I was thinking about. And he</p> <p>16 says, you know, particularly of the Linx pilots, he</p> <p>17 says, their reasonable expectations for career</p> <p>18 advancement were the least of the active pilot</p> <p>19 groups ranking only above the Midwest</p> <p>20 pre-transaction furlonghees. They operated only</p> <p>21 turboprop aircraft, accumulated only limited</p> <p>22 seniority, flying under a startup operation that</p> <p>23 went bankrupt, and on and on he goes to talk about</p> <p>24 the dismal state that the Linx pilots were in, you</p> <p>25 know. But yet he merged those pilots with people</p>	<p style="text-align: right;">95</p> <p>1 point of view of the likelihood of the carrier</p> <p>2 surviving, but does it actually translate into</p> <p>3 people's placement on the seniority list? And I</p> <p>4 would argue, not really. A little bit at the</p> <p>5 margin, but not in the general way in which -- or</p> <p>6 the general manner in which the seniority lists are</p> <p>7 constructed.</p> <p>8 Q And have you done any empirical</p> <p>9 analysis to support your intuition that the</p> <p>10 financial condition of the carrier is not given</p> <p>11 substantial weight in seniority integration?</p> <p>12 A Well, by going through all of these</p> <p>13 awards and looking at each one where one carrier was</p> <p>14 in distress, and what the outcome of that was, and</p> <p>15 whether or not that financial distress played a</p> <p>16 significant role in the construction of the list, we</p> <p>17 could compare this by simply looking at, you know,</p> <p>18 how one list was constructed in a bankruptcy and</p> <p>19 comparing it to how a list was constructed outside</p> <p>20 of bankruptcy. And if they are markedly different,</p> <p>21 then you would say, yeah, okay. So, obviously,</p> <p>22 there is some reason to believe that bankrupt</p> <p>23 carriers, the treatment of their working pilots is</p> <p>24 different under a situation of financial distress</p> <p>25 than in others. And I've never seen any evidence</p>
<p style="text-align: right;">94</p> <p>1 whose careers expectations were, at least from an</p> <p>2 economic point of view, significantly better, and</p> <p>3 were flying equipment that was significantly better.</p> <p>4 So there is that one.</p> <p>5 BY MR. TOAL:</p> <p>6 Q Well, in that one --</p> <p>7 A I'm not actually -- I'm not actually</p> <p>8 done.</p> <p>9 Q Okay. Go ahead.</p> <p>10 A I think there are a couple others we</p> <p>11 might want to look at.</p> <p>12 The Continental/Frontier. Again, you know,</p> <p>13 Nicolau says, you know, Frontier had precious little</p> <p>14 prospect of surviving as of the day before its</p> <p>15 shutdown. It was shrinking, not expanding,</p> <p>16 continuously losing money, badly draining its</p> <p>17 corporate appearance, and on and on, a dismal</p> <p>18 situation. Yet he takes all of the captains from</p> <p>19 Frontier and places them just below the junior</p> <p>20 captains at Continental. And so, instead of</p> <p>21 stapling them as, you know, it seems like he was</p> <p>22 more or less, you know, ordered to do by his terms</p> <p>23 of reference, he places the Frontier pilots in their</p> <p>24 group. So, you know, yes, they consider the</p> <p>25 economics and the premerger expectations from the</p>	<p style="text-align: right;">96</p> <p>1 that that's the case.</p> <p>2 Q And have you done such an analysis to</p> <p>3 try and determine if there is a correlation between</p> <p>4 the financial condition of the acquired airline and</p> <p>5 the placement of their --</p> <p>6 A -- working pilots, yeah.</p> <p>7 Q -- and the placement of their pilots on</p> <p>8 the list?</p> <p>9 A There is different -- there is</p> <p>10 different placement absolutely in terms of what</p> <p>11 happened with furloughed pilots. But in terms of</p> <p>12 their working pilots, not particularly. And I have</p> <p>13 done -- I have looked at several merged seniority</p> <p>14 lists from several different mergers. And I have</p> <p>15 looked at whether there is a noticeable difference</p> <p>16 in how they are constructed, whether one carrier is</p> <p>17 in bankruptcy or not. And it would be my contention</p> <p>18 that there is no difference.</p> <p>19 Q Have you done a quantitative analysis</p> <p>20 to try and assess whether it is true that the</p> <p>21 financial condition of the acquired airline affects</p> <p>22 the placement of the pilots of the acquired airline</p> <p>23 in a merged seniority integration list?</p> <p>24 A Have I done a quantitative analysis?</p> <p>25 Yes, I would say I have where I've looked at</p>

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<p style="text-align: right;">97</p> <p>1 the number of pilots that were merged from each 2 carrier, what their working status was, and whether 3 it differs from a merger where one group is in 4 bankruptcy to one where, like for a business. Yes, 5 I've certainly done that analysis. There is a few 6 others, as well, but they are not really as -- as 7 fun to talk about, but -- 8 Q Few other what? 9 A Types of analysis between what mergers 10 looked like where the one carrier is in financial 11 distress and not the other. 12 Q And what -- what other analysis do you 13 have in mind? 14 MS. RODRIGUEZ: I object to the form. 15 THE WITNESS: The number of pilots that 16 end up in the top half of the list is one type of 17 analysis that's been done. 18 BY MR. TOAL: 19 Q And what are the others? 20 A The number of pilots that have ended up 21 in the bottom half of the list. You know, the 22 problem with those is it is almost impossible to 23 adjust for the equipment that people are bringing, 24 and whether or not it should be included in the list 25 construction in the first place. So, in general,</p>	<p style="text-align: right;">99</p> <p>1 Q Mr. Salamat, you did undergraduate 2 coursework at the Ontario College of Art; correct? 3 A That's correct. 4 Q And what years did you study there? 5 A '87 -- '86 and '87, I believe. 6 Q And what did you study there? 7 A Fine arts. 8 Q And why did you leave the Ontario 9 College of Art? 10 A Because I couldn't draw. 11 Q Any other reasons? 12 A Mostly because I couldn't draw, and in 13 order to progress in the program, you had to finish 14 your what was called foundation year where you had 15 to paint, and draw and do a whole bunch of other 16 things, and you had to be able to pass those 17 courses, so -- 18 Q So you said mostly because you couldn't 19 draw. Were there any other reasons that you decided 20 to leave there? 21 A There was another reason, but I don't 22 know how relevant it would be. 23 Q What was the other reason? 24 A Well, I was seeing this girl. She 25 thought I would make a fine lawyer, so I decided I</p>
<p style="text-align: right;">98</p> <p>1 you are left with just saying how many pilots were 2 merged and what was their status? And was one group 3 of working pilots left behind or predominantly left 4 off of the construction of the major pilot list in a 5 bankrupt situation versus a non-bankrupt situation. 6 Q And have you done any written analysis 7 that you can point me to concerning the extent to 8 which the -- the financial condition of the acquired 9 airline affects the placement of pilots of the 10 acquired airline on a merged seniority list? 11 A I have not written anything on the 12 subject that would be easy to point to. 13 Q Whether it is easy to point to or not, 14 is there anything you've written on the subject? 15 A I -- I don't believe I've -- I've 16 written anything on the subject. 17 THE WITNESS: Can we take a quick 18 break? I swear, it will only be, like, five 19 minutes. 20 VIDEO SPECIALIST: The time is now 21 11:45 and we are going off the video record. 22 (Brief recess.) 23 VIDEO SPECIALIST: The time is now 24 11:48 and we are back on the video record. 25 BY MR. TOAL:</p>	<p style="text-align: right;">100</p> <p>1 would leave art school and go off and study 2 economics at the University of Toronto. 3 Q Okay. So you -- you did undergraduate 4 coursework at the University of Toronto, also? 5 A I did -- did one year of undergraduate 6 work there. 7 Q And what did you study there? 8 A Economics. 9 Q Is that '87 to '88? 10 A Yes, I believe so. 11 Q And why did you leave the University of 12 Toronto? 13 A Because economics wasn't for me. Or 14 more particularly, the University of Toronto wasn't 15 for me. First year in economics, the University of 16 Toronto was a sort of dismal experience, so I 17 decided to switch universities. 18 Q And did you leave Toronto to attend 19 York University? 20 A I did. 21 Q And you obtained a degree from York 22 University in 1994; is that correct? 23 A I believe that's correct, yes. 24 Q Did you go directly from the University 25 of Toronto to York University?</p>

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<p style="text-align: right;">101</p> <p>1 A There was -- I don't -- there was 2 nothing in between. 3 Q Were you a full-time student at York 4 University, from -- 5 A Yes. Yeah. I was a full-time student 6 at UFT one year and then York University the next. 7 Q So starting in -- was it 1989 that you 8 started at York University? 9 A Yeah. 10 Q And so, from 1989 through 1994, you 11 were working to get your degree at York University; 12 correct? 13 A That's correct. 14 Q What were you studying at York 15 University? 16 A Anthropology and women's studies. 17 Q And what degree did you attain from 18 York University? 19 A An honor's bachelor. 20 Q And how is an honor's bachelor 21 different from a bachelor of arts degree? 22 A To get an honor's bachelor, you have to 23 have two majors. 24 Q And what did you do after you left York 25 University?</p>	<p style="text-align: right;">103</p> <p>1 ended in '94. 2 Q Same year you graduated from York 3 University? 4 A That's correct. 5 Q And what did you do after leaving Earth 6 Roots? 7 A I went to work for Now Magazine. Or I 8 may have worked a couple of contracts with other 9 NGOs in between the two, but -- 10 Q And what is -- what is Now Magazine? 11 A Now Magazine is an alternative news 12 weekly. 13 Q What did you do for Now Magazine? 14 A I was the system's analyst. 15 Q What systems were you analyzing? 16 A Well, financial systems. Financial 17 systems, ad booking systems, publication systems. 18 Q Were you analyzing the financial 19 systems of Now Magazine? 20 A Yes. 21 Q Were you analyzing any other financial 22 systems? 23 A Just their internal finances. 24 Q And how long did you stay at Now 25 Magazine?</p>
<p style="text-align: right;">102</p> <p>1 A I worked at a number of jobs. 2 Q So what did you do first? 3 A Well, when I left -- when I graduated 4 from York University, I was still working for an NGO 5 called Earth Roots. I worked for them for some 6 time, and I left and went to work for a publication 7 called Now Magazine. 8 Q So what did you do for Earth Roots? 9 A I was a campaign coordinator. 10 Q What sorts of campaigns? 11 A There was a campaign on zero emission, 12 there was the Boreal Forest Logging, Old Growth 13 Forest Protection, and those -- those were the three 14 major campaigns that I worked on. 15 Q And what did you do in connection with 16 these campaigns? 17 A I was working with fundraising. I 18 wrote newsletters. I was in charge of summer 19 students and scientists who were doing specific bits 20 of research on one of those three projects, 21 maintained databases. You know, it was an NGO. You 22 kind of do everything. 23 Q And when did you leave Earth Roots? 24 A 19 -- I think it was in '94. I stayed 25 on in some fashion for years after, but my full-time</p>	<p style="text-align: right;">104</p> <p>1 A I think I was there for about four 2 years. 3 Q So approximately 1998, you left? 4 A I think around '98, yeah. 5 Q And what did you do after that? 6 A I started a company called Web Impact. 7 Q And what kind of company was that? 8 A It was a -- an internet development 9 company. 10 Q So what were you doing at Web Impact? 11 A I had a staff that was doing internet 12 development. So I was negotiating contracts with 13 clients, and overseeing staff, and doing some 14 development myself, particularly the -- the more 15 analytical systems that we developed for some 16 clients. 17 Q What is internet development? 18 A Web site. We built -- we built web 19 sites for the most part, but we also did a lot of 20 development for intranets and things that were 21 internet enabled but never actually put on the 22 internet. 23 Q How long did you stay at Web Impact? 24 A I sold the company in 2000 -- 2000, I 25 think. It was right -- right after the crash, so I</p>

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<p style="text-align: right;">105</p> <p>1 guess it was 2000. I stayed on for a few months and 2 then left.</p> <p>3 Q And what did you do after selling Web 4 Impact?</p> <p>5 A I went to work for -- well, I 6 started -- I started my own consulting company where 7 we were doing demonstrable exhibits and evidence for 8 a few law firms. We -- yeah, that was -- that was 9 the majority of the work that I did, and then I went 10 and took a job at a -- a company called Oven 11 Digital.</p> <p>12 Q What is the name of the consulting 13 company that you started?</p> <p>14 A I can't remember what -- when -- at 15 some point in time it became Case Lab, but I can't 16 remember when exactly that name started, so --</p> <p>17 Q So has that company been operating 18 continuously since you -- you started it after -- 19 after leaving Web Impact?</p> <p>20 A Yeah. Even while I was at Oven, I was 21 winding down my work there, but Oven promptly went 22 bankrupt, and so I continued on.</p> <p>23 Q And what year did you start this 24 consulting company?</p> <p>25 A That would have been after I sold Web</p>	<p style="text-align: right;">107</p> <p>1 by a kind of rag-tag bunch of people who had been 2 set adrift, and so kind of continued Oven Digital 3 work up until the middle of the summer of 2001. So 4 -- but when exactly I stopped being an employee of 5 Oven, I can't recall.</p> <p>6 Q What were you doing for Oven Digital?</p> <p>7 A Well, my -- my title was technical 8 strategist but, you know, my job was, you know, to 9 be the technical person involved in -- in sales and 10 also overseeing technical staff. They had design 11 staff and technical staff, and -- and I was 12 overseeing the technical staff.</p> <p>13 Q What sort of business is Oven Digital 14 in -- were they in?</p> <p>15 A They were a design company, internet 16 design.</p> <p>17 Q And what did you do after Oven Digital?</p> <p>18 A After Oven Digital, I went back to the 19 consulting work that I was doing before.</p> <p>20 Q And have you continued doing that 21 consulting work ever since?</p> <p>22 A Yes.</p> <p>23 Q Have you been employed by any other 24 businesses since the time that you went back to the 25 consulting group?</p>
<p style="text-align: right;">106</p> <p>1 Impact, so it would have been in 2000.</p> <p>2 Q Do you work for law firms in Canada?</p> <p>3 A Yes.</p> <p>4 Q Did you work for law firms elsewhere?</p> <p>5 A Not until -- not -- not originally, no.</p> <p>6 Q And then you said you went to Oven 7 Digital?</p> <p>8 A Uh-huh.</p> <p>9 Q And how were you splitting your time 10 between the consulting company and Oven Digital when 11 you started at Oven Digital?</p> <p>12 A Well, when I took the job at Oven 13 Digital, I started transferring all my work over to 14 someone that I had -- I had done work with in the 15 past. And then Oven went under, and it all got 16 transferred back to me again, so --</p> <p>17 Q When did you start at Oven Digital?</p> <p>18 A It was in -- it was in 2000, but I -- I 19 can't remember. It was -- it was in the fall, I 20 believe.</p> <p>21 Q And when did you stop working at Oven 22 Digital?</p> <p>23 A Well, the company went bankrupt in 24 January or February of 2001. So I don't know -- 25 some of the work that was in progress got taken over</p>	<p style="text-align: right;">108</p> <p>1 A Well, I'm a partner in a company called 2 Cruise Wear, and so, you know, I'm technically an 3 employee of that company.</p> <p>4 Q What does that company do?</p> <p>5 A It -- it has a software -- it creates 6 software for airline scheduling.</p> <p>7 Q And you -- you obtained an MBA degree 8 from the University of Toronto in 2003; correct?</p> <p>9 A That's right.</p> <p>10 Q Were you working while you were 11 studying for your degree?</p> <p>12 A Yes.</p> <p>13 Q Were you a full-time student in the MBA 14 program?</p> <p>15 A Yes.</p> <p>16 Q When did you start -- when did you 17 start studying for your MBA?</p> <p>18 A The fall of 2001.</p> <p>19 Q Did you have any field of concentration 20 in connection with your MBA?</p> <p>21 A No.</p> <p>22 Q Now, in the first page of your report, 23 you say that you personally specialize in the 24 analysis of economic and financial data, primarily 25 for professional associations and labor unions;</p>

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<p style="text-align: right;">109</p> <p>1 correct?</p> <p>2 A That's correct.</p> <p>3 Q Is that an accurate description of your</p> <p>4 field of specialization?</p> <p>5 A I believe it is.</p> <p>6 Q Have you ever received any awards or</p> <p>7 certifications from professional organizations?</p> <p>8 A Awards or certifications?</p> <p>9 I get these plaques given to me now and again</p> <p>10 that say thank you for your hard work.</p> <p>11 Q Who gives you those plaques?</p> <p>12 A Pilot groups. I mean, I've got a bunch</p> <p>13 of them hanging around. I've got one from the</p> <p>14 Northwest pilots. I've got one from the Canadian</p> <p>15 Airline pilots. I've got one from the USAirways</p> <p>16 pilots. I've got one from the Ontario Justices of</p> <p>17 the Peace, I believe.</p> <p>18 Q So as -- I was more interested in any</p> <p>19 sort of professional certifications, professional</p> <p>20 licenses that you may have.</p> <p>21 A No.</p> <p>22 Q Have you received any awards from</p> <p>23 economic groups, business groups?</p> <p>24 A No. No, I haven't.</p> <p>25 Q Have you ever served as an arbitrator</p>	<p style="text-align: right;">111</p> <p>1 A Yes.</p> <p>2 Q How many?</p> <p>3 A Hmm?</p> <p>4 Q How many written expert reports did you</p> <p>5 submit in that case?</p> <p>6 A For the first one, I don't think there</p> <p>7 was any written. For the second one, there were</p> <p>8 several reports I did for Brian Keller and -- and</p> <p>9 the arbitration panel. One or two for the</p> <p>10 proceeding.</p> <p>11 Q Which proceeding are you -- are you</p> <p>12 referring to?</p> <p>13 A The seniority integration -- this would</p> <p>14 be the second arbitration in the -- in the pilot</p> <p>15 seniority dispute. The third case would have been a</p> <p>16 limited reconsideration that was done. And so,</p> <p>17 quite possibly all of the work that I had done in</p> <p>18 the previous two was redone plus some additional</p> <p>19 work.</p> <p>20 Q And just so we are clear that we are</p> <p>21 talking about the same thing, that is the --</p> <p>22 A 240103-C.</p> <p>23 Q So it says under that entry, expert</p> <p>24 report for the Air Line Pilot's Association,</p> <p>25 Canadian Airlines.</p>
<p style="text-align: right;">110</p> <p>1 of a seniority integration dispute?</p> <p>2 A No, I have not.</p> <p>3 Q Have you served as an arbitrator for</p> <p>4 any kind of dispute?</p> <p>5 A No, I have not.</p> <p>6 Q Have you served as a mediator?</p> <p>7 A No.</p> <p>8 Q I'm going to direct your attention back</p> <p>9 to the list of prior expert testimony.</p> <p>10 A Uh-huh.</p> <p>11 Q Would you take a look at that page in</p> <p>12 your report?</p> <p>13 A Yes.</p> <p>14 Q So the first five entries here all</p> <p>15 appear to relate to an Air Canada dispute; is that</p> <p>16 correct?</p> <p>17 A That's the merger of Air Canada and</p> <p>18 Canadian.</p> <p>19 Q So are these all different stages of</p> <p>20 the same -- same underlying dispute?</p> <p>21 A Well, they all -- they all stem from</p> <p>22 the seniority integration of Canadian Airlines</p> <p>23 pilots and Air Canada pilots.</p> <p>24 Q Did you submit written expert reports</p> <p>25 in connection with this case?</p>	<p style="text-align: right;">112</p> <p>1 A Uh-huh.</p> <p>2 Q Is it your recollection that you did</p> <p>3 submit a report --</p> <p>4 A Yes.</p> <p>5 Q -- in connection with --</p> <p>6 A No, no. I mean, there was a report. I</p> <p>7 just can't -- you know, part of that report would</p> <p>8 have been everything that was done prior, so -- I</p> <p>9 can't recall how much original work went into that</p> <p>10 report.</p> <p>11 Q Did you submit written reports for</p> <p>12 either of the two other entries related to the Air</p> <p>13 Canada matter?</p> <p>14 A For the fourth one, yes. And probably</p> <p>15 not for the fifth one. For the fifth one, I would</p> <p>16 have just served as an expert.</p> <p>17 Q Did you testify in any of those five</p> <p>18 matters?</p> <p>19 A Well, I testified in the second one. I</p> <p>20 testified multiple times in front of the arbitration</p> <p>21 panel.</p> <p>22 Q How about in any of the others?</p> <p>23 A No.</p> <p>24 Q In these five matters, to the extent</p> <p>25 you submitted an expert report, do you have a copy</p>

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<p style="text-align: right;">113</p> <p>1 of the report that you submitted?</p> <p>2 A I doubt it very much. It's -- it's --</p> <p>3 it's very unlikely. I mean, they weren't expert</p> <p>4 reports in the sense that these ones are. I mean,</p> <p>5 they were reports that were specific responses to</p> <p>6 specific questions posed by the arbitrator. Could</p> <p>7 you tell us the impact of X? And I would do it and</p> <p>8 hand it over to them. I mean, they were never --</p> <p>9 they were not formal reports. The report for the</p> <p>10 third one on the list, there may be a copy of that</p> <p>11 one around someplace.</p> <p>12 Q Have you done anything to try and</p> <p>13 locate any expert report that you submitted in any</p> <p>14 of these five matters?</p> <p>15 A No.</p> <p>16 Q Do you have copies of transcripts of</p> <p>17 any testimony you gave in any of these five matters?</p> <p>18 A No. They didn't have any transcripts</p> <p>19 in those proceedings.</p> <p>20 Q The next matter on the list, the 2007</p> <p>21 pilot seniority integration of the pilots of</p> <p>22 USAirways and the pilots of America West Airlines,</p> <p>23 did you submit a written expert report in that case?</p> <p>24 A Well, I submitted a report. I gave,</p> <p>25 you know, testimony. Submitted volumes, and</p>	<p style="text-align: right;">115</p> <p>1 know.</p> <p>2 Q So the next -- but you haven't made</p> <p>3 such a request to date; correct?</p> <p>4 A No.</p> <p>5 Q The next item on the list, 2008 inquiry</p> <p>6 by the Fifth Triennial Justices of the Peace</p> <p>7 Remuneration Commission, did you submit a written</p> <p>8 expert report in that matter?</p> <p>9 A I did.</p> <p>10 Q Do you have a copy of that report?</p> <p>11 A Not with me, but there is one probably</p> <p>12 in my office.</p> <p>13 Q Did you testify in that case?</p> <p>14 A I did.</p> <p>15 Q Was there a transcript created of your</p> <p>16 testimony?</p> <p>17 A No.</p> <p>18 Q And what were you doing in that matter?</p> <p>19 A The Fifth Triennial Justices of the</p> <p>20 Peace Remuneration Commission is the -- is the quasi</p> <p>21 judicial body whose responsibility it is to decide</p> <p>22 how much Justices of the Peace get paid, and my</p> <p>23 report had to do with the costs of an agreement that</p> <p>24 was reached between the government and the</p> <p>25 association of the Justices of the Peace that we</p>
<p style="text-align: right;">114</p> <p>1 volumes, and volumes of data. But, you know, there</p> <p>2 wasn't a written report in the sense of this one</p> <p>3 where a conclusion was arrived at or -- so, it is</p> <p>4 not what I would have called a report. It is what I</p> <p>5 would have called a submission, but -- but you would</p> <p>6 probably call it a report.</p> <p>7 Q I would?</p> <p>8 A Yeah.</p> <p>9 Q Do you have a copy of the submission</p> <p>10 that you made in connection with that case?</p> <p>11 A I may. I may. I don't -- I don't</p> <p>12 know.</p> <p>13 Q Did you offer testimony in that case?</p> <p>14 A I did.</p> <p>15 Q Was there a transcript of those</p> <p>16 proceedings?</p> <p>17 A I believe there is.</p> <p>18 Q Do you have a copy of the transcript of</p> <p>19 your testimony from that proceeding?</p> <p>20 A I do not.</p> <p>21 Q Would you be able to acquire a copy of</p> <p>22 the transcript of your testimony in that case?</p> <p>23 A I could request it from the -- the firm</p> <p>24 that I worked with on that one. They may or may not</p> <p>25 have it. They may or may not provide it. I don't</p>	<p style="text-align: right;">116</p> <p>1 negotiated.</p> <p>2 Q The next matter on this list, the 2008</p> <p>3 seniority integration arbitration between the pilots</p> <p>4 of Northwest and the pilots of Delta Airlines, did</p> <p>5 you submit a written report in that case?</p> <p>6 A I wrote a written report for that case.</p> <p>7 It was submitted by a pilot witness and not by me.</p> <p>8 Q Submitted by a pilot witness as if the</p> <p>9 pilot witness had prepared the report?</p> <p>10 A No. It was presented and discussed by</p> <p>11 a pilot witness rather than by me.</p> <p>12 Q Was there a report submitted under your</p> <p>13 name?</p> <p>14 A I -- I cannot recall. It certainly</p> <p>15 would have been well known that it was -- it</p> <p>16 certainly would have been known by the arbitrators</p> <p>17 and everyone in the room that it was my work.</p> <p>18 Whether it had my name on it, I honestly cannot</p> <p>19 recall.</p> <p>20 Q Do you have a copy of the report that</p> <p>21 was submitted?</p> <p>22 A Someplace.</p> <p>23 Q Did you testify in that case?</p> <p>24 A I did not.</p> <p>25 Q The next item, the 2009 System Board of</p>

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<p style="text-align: right;">117</p> <p>1 Adjustment Transition Dispute between USAirways 2 pilots and USAir, did you submit a written report, a 3 written expert report in that case? 4 A I did. 5 Q And do you have a copy of that report? 6 A I -- I -- I will have a copy someplace, 7 yes. 8 Q Did you testify in that case? 9 A I did. 10 Q Was a transcript created of your 11 testimony? 12 A I believe there was. 13 Q And do you have a copy of that 14 transcript? 15 A I do not. 16 Q Would you be able to obtain a copy of 17 that transcript? 18 A I can request it. 19 Q Next item, the 2009 US District Court 20 for the District of Arizona, did you submit a 21 written expert report in that case? 22 A I did. 23 Q Do you have a copy of that report? 24 A Someplace. 25 Q Did you testify in that case?</p>	<p style="text-align: right;">119</p> <p>1 list on the America West pilots, and I was asked to 2 validate that his calculations were correct. 3 Q So the next item on the list is a 2009 4 Canadian Human Rights Tribunal. Do you see that? 5 A Yes. 6 Q Did you submit a written, expert report 7 in connection with that matter? 8 A I did. 9 Q What was the nature of that report? 10 A I was testifying on the impact of a 11 proposal to change the age of retirement for Canada 12 pilots from 60 to 65. 13 Q And did you testify in that case? 14 A I did. 15 Q Do you have a copy of the transcript of 16 your testimony? 17 A I don't believe there was a transcript. 18 Q Do you have a copy of the report that 19 you submitted in that case? 20 A Yes. 21 Q The 2010 System Board of Adjustment 22 transition disputes 12, 13 and 14, did you submit a 23 written expert report in connection with that 24 matter? 25 A I did.</p>
<p style="text-align: right;">118</p> <p>1 A I did not. 2 Q Did you testify even in a deposition in 3 that case? 4 A No. 5 Q Were you accepted by the court as an 6 expert witness? 7 A I believe all experts were excluded 8 from the case, so whether we had -- I had been 9 accepted and then excluded or excluded before being 10 accepted, I couldn't say because I wasn't at the 11 trial. 12 Q Do you know on what basis you were 13 excluded from the case? 14 A All of the experts were excluded 15 because the -- the judge was not interested in 16 hearing any of that type of evidence, I understand. 17 Q Do you have a specific understanding of 18 the reasons that your testimony was excluded? 19 A No. I was told that all the experts 20 that were providing reports on -- on impacts were 21 not going to be admissible. 22 Q And what was the nature of your report 23 in that case? 24 A There was a pilot who had done some 25 financial analysis of the impact of the USAirways</p>	<p style="text-align: right;">120</p> <p>1 Q Do you have a copy of that report? 2 A I must, someplace. 3 Q And did you testify in that matter? 4 A I did. 5 Q Is there a transcript of your 6 testimony? 7 A Some of it. I believe there is. 8 Q And do you have a copy of that 9 transcript? 10 A No, I do not. 11 Q Next matter on your list is a 2011 12 Ontario Superior Court matter. Do you see that? 13 A Yes. 14 Q And did you submit a written expert 15 report in that case? 16 A I did. 17 Q Do you have a copy of it? 18 A Someplace. 19 Q Did you testify in that case? 20 A I did not. 21 Q The next item is a 2011 System Board of 22 Adjustment transition dispute. Do you see that? 23 A Yes. 24 Q Did you submit a written expert report 25 in that case?</p>

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<p style="text-align: right;">121</p> <p>1 A I did.</p> <p>2 Q Do you have a copy?</p> <p>3 A Someplace.</p> <p>4 Q Did you testify in that case?</p> <p>5 A I did.</p> <p>6 Q And was a transcript of your testimony</p> <p>7 created?</p> <p>8 A I do not know.</p> <p>9 Q And you list a 2008 to 2011 National</p> <p>10 Mediation Board. Do you see that?</p> <p>11 A Yes.</p> <p>12 Q Did you submit a written expert report</p> <p>13 in connection with that matter?</p> <p>14 A Several, over -- over that period.</p> <p>15 Q Do you have copies of those reports?</p> <p>16 A Most likely.</p> <p>17 Q Did you testify in that matter?</p> <p>18 A I did.</p> <p>19 Q Was there a transcript created of your</p> <p>20 testimony?</p> <p>21 A No.</p> <p>22 Q And then you list a 2012 Collective</p> <p>23 Bargaining Agreement Arbitration by Final Order</p> <p>24 Selection. Do you see that?</p> <p>25 A Yes.</p>	<p style="text-align: right;">123</p> <p>1 A Yeah. You know, the -- the Berry</p> <p>2 versus Pulley had an extensive narrative. The final</p> <p>3 offer selection was largely a quantitative analysis,</p> <p>4 not much on words. Human Rights Tribunal might have</p> <p>5 been a bit wordier. I don't -- I mean, the</p> <p>6 difference between a quantitative report and a</p> <p>7 narrative report, maybe there is some gray area</p> <p>8 there, but I believe this one would certainly be the</p> <p>9 most narrative of all.</p> <p>10 Q And the Berry versus Pulley matter that</p> <p>11 you mentioned --</p> <p>12 A Yes.</p> <p>13 Q -- which -- which one of the items on</p> <p>14 your list is that?</p> <p>15 A That would be the first item on the</p> <p>16 second page.</p> <p>17 Q Have you ever previously offered an</p> <p>18 expert opinion on the likely result of a negotiation</p> <p>19 between two parties, had circumstances been</p> <p>20 different?</p> <p>21 A No, I've not.</p> <p>22 Q So you say on the first page of your</p> <p>23 expert report that your practice has involved</p> <p>24 analyzing the impacts of pilot seniority mergers.</p> <p>25 Is that accurate?</p>
<p style="text-align: right;">122</p> <p>1 Q Did you submit a written expert report</p> <p>2 in that matter?</p> <p>3 A I did.</p> <p>4 Q Do you have a copy?</p> <p>5 A Yes.</p> <p>6 Q Did you testify in that case?</p> <p>7 A I did not testify.</p> <p>8 Q So you said in a number of the matters</p> <p>9 that you listed as prior expert experience, you made</p> <p>10 submissions but not -- not reports that you thought</p> <p>11 were similar to the report that you submitted in</p> <p>12 this case.</p> <p>13 A Uh-huh.</p> <p>14 MS. RODRIGUEZ: Objection.</p> <p>15 BY MR. TOAL:</p> <p>16 Q Do that you recall that testimony?</p> <p>17 A Yes. I said that many of the reports</p> <p>18 that I filed were not similar to this one.</p> <p>19 Q Have -- have you ever submitted a</p> <p>20 report that is similar to the report that you</p> <p>21 submitted in this case?</p> <p>22 A Well, this case is pretty unique, so,</p> <p>23 no.</p> <p>24 Q Have you ever submitted a report with</p> <p>25 an extensive narrative?</p>	<p style="text-align: right;">124</p> <p>1 A Yes.</p> <p>2 Q What do you specifically do in order to</p> <p>3 analyze the impacts of pilot seniority mergers?</p> <p>4 A Well, when you say what do I typically</p> <p>5 do, I think you are going to have to be a little</p> <p>6 more specific than that.</p> <p>7 Q How do you go about analyzing the</p> <p>8 impact of seniority mergers?</p> <p>9 A Well, in its most general form, we</p> <p>10 compare what would happen to the income of pilots</p> <p>11 under one scenario versus another.</p> <p>12 Q And is -- is that -- does that reflect</p> <p>13 the majority of the expert work you've done in the</p> <p>14 matters that you've listed on your list of expert</p> <p>15 testimony?</p> <p>16 A Does -- does what? I'm sorry. Maybe</p> <p>17 you can ask that question a different way.</p> <p>18 Q In prior cases in which you've served</p> <p>19 as an expert witness, are you typically making</p> <p>20 assessments of the impact of two different seniority</p> <p>21 integration scenarios?</p> <p>22 A If it's a seniority integration issue,</p> <p>23 yeah.</p> <p>24 Q So in the seniority integration matters</p> <p>25 in which you've worked on previously, is the work</p>

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<p style="text-align: right;">125</p> <p>1 that you've done to assess the financial impact of</p> <p>2 two different seniority integration proposals?</p> <p>3 A That would generally be the case.</p> <p>4 Q You refer in your report to something</p> <p>5 called the ALPA merger tool?</p> <p>6 A Yes.</p> <p>7 Q When did you develop the ALPA merger</p> <p>8 tool?</p> <p>9 A The ALPA merger tool was developed in</p> <p>10 2002.</p> <p>11 Q What were the circumstances in which</p> <p>12 you developed it?</p> <p>13 A It was developed for the Air Line</p> <p>14 Pilot's Association, Canadian Airlines, for the</p> <p>15 purposes of an appeal of their seniority integration</p> <p>16 with Canadian Airlines -- with -- with Air Canada.</p> <p>17 And having won that appeal, to prepare for and to go</p> <p>18 through the arbitration, second arbitration.</p> <p>19 Q Did you use the ALPA merger tool in</p> <p>20 this case?</p> <p>21 A Parts of it were -- were used, but not</p> <p>22 in any great measure.</p> <p>23 Q To the extent you used the ALPA merger</p> <p>24 tool in this case, how did you use it?</p> <p>25 A It had one component that made merged</p>	<p style="text-align: right;">127</p> <p>1 a duty of fair representation by ALPA?</p> <p>2 A No. That was one objective of the</p> <p>3 report, yes.</p> <p>4 Q And what information did you think you</p> <p>5 needed in order to make that assessment?</p> <p>6 A The proposals that had been passed</p> <p>7 between the parties, information on -- on what the</p> <p>8 courses of action that ALPA had available to it that</p> <p>9 were not undertaken, the closing arguments in the</p> <p>10 trial and the instructions to the jury in the trial</p> <p>11 are probably the most important things that I</p> <p>12 referenced.</p> <p>13 Q Anything else that you thought was</p> <p>14 necessary in order for you to conduct your analysis?</p> <p>15 A Well, lots and lots of data. I mean,</p> <p>16 first of all, which analysis are we talking about?</p> <p>17 The -- the estimating of what the APA and ALPA would</p> <p>18 have agreed to, or --</p> <p>19 Q Yes.</p> <p>20 A Well, I mean, in terms of data, to the</p> <p>21 contributing lists that went into the merger, which</p> <p>22 included people's positions, the fleet information</p> <p>23 of both of the airlines. I think I already</p> <p>24 mentioned the proposals that had been passed,</p> <p>25 information on the actions that ALPA did or didn't</p>
<p style="text-align: right;">126</p> <p>1 seniority lists, and I used that.</p> <p>2 Q And as part of your backup, did you</p> <p>3 provide the part of the ALPA merger tool that you</p> <p>4 used in this case?</p> <p>5 A I don't know whether I did or not. I</p> <p>6 may not have.</p> <p>7 Q Okay. We would request production of</p> <p>8 whatever part of the ALPA merger tool was used in</p> <p>9 this case.</p> <p>10 A All right.</p> <p>11 Q Was your objective in this case to try</p> <p>12 and figure out what the merged seniority list --</p> <p>13 what any merged seniority list between the TWA MEC</p> <p>14 and the APA would have looked like in the absence of</p> <p>15 a breach of a duty of fair representation by ALPA?</p> <p>16 MS. RODRIGUEZ: I object to the form.</p> <p>17 THE WITNESS: I'm sorry. Can I ask you</p> <p>18 to ask that question again? I'm really not sure I</p> <p>19 understood it.</p> <p>20 BY MR. TOAL:</p> <p>21 Q Sure.</p> <p>22 The question is whether your objective in this</p> <p>23 case was to try to figure out what any merged</p> <p>24 seniority list agreed upon between the TWA MEC and</p> <p>25 the APA would have looked like absent any breach of</p>	<p style="text-align: right;">128</p> <p>1 undertake that led to the breach. Sitting here</p> <p>2 right now, I can't think of any others, but I'm --</p> <p>3 I'm not saying there aren't any.</p> <p>4 Q Where did you acquire information on</p> <p>5 the actions that ALPA had available to it that it</p> <p>6 didn't pursue?</p> <p>7 A From the testimony of Mike Day and from</p> <p>8 the closing arguments.</p> <p>9 Q Did you have any other source of</p> <p>10 information on the actions that ALPA had available</p> <p>11 to it that it didn't undertake?</p> <p>12 A No. I think -- I think the most</p> <p>13 comprehensive list I had of things that hadn't been</p> <p>14 undertaken were the closing arguments in the trial.</p> <p>15 Q Did you have any information available</p> <p>16 to you on the likelihood that any of those actions</p> <p>17 that ALPA had available to it would be successful?</p> <p>18 A Peter Fram's closing.</p> <p>19 Q You mean Steve Fram?</p> <p>20 A Steve Fram.</p> <p>21 I'm thinking Peter Frampton. Okay. Sorry.</p> <p>22 Q Did you have any other source of</p> <p>23 information other than Steve Fram's closing on the</p> <p>24 likelihood that any of those actions would have been</p> <p>25 successful?</p>

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<p style="text-align: right;">129</p> <p>1 A No, I did not.</p> <p>2 Q And what did Steve Fram's closing tell</p> <p>3 you about the likelihood that any of those actions</p> <p>4 would have been successful?</p> <p>5 A Well, he -- he thought that the -- the</p> <p>6 actions wouldn't have been successful.</p> <p>7 Q And that was the only source of</p> <p>8 information you had about whether those actions</p> <p>9 would have worked or not?</p> <p>10 A Yes.</p> <p>11 Q Now, in the second page of your report,</p> <p>12 the first sentence you say, in Patrick Brady, et al,</p> <p>13 versus Air Line Pilot's Association (ALPA), the jury</p> <p>14 found that ALPA violated its duty of fair</p> <p>15 representation to the former pilots of TransWorld</p> <p>16 Air (TWA), and that this violation caused injury to</p> <p>17 the TWA pilots. Do you see that?</p> <p>18 A That's right.</p> <p>19 Q And did the jury verdict say anything</p> <p>20 about how many TWA pilots were injured by the</p> <p>21 alleged breach of fair duty?</p> <p>22 A It did not.</p> <p>23 Q Did the jury verdict say anything about</p> <p>24 which of the actions ALPA had available to it but</p> <p>25 did not undertake constituted the breach of the duty</p>	<p style="text-align: right;">131</p> <p>1 Q If you knew, for example, that the jury</p> <p>2 thought that initiating a jump seat war was not a</p> <p>3 breach of the duty of fair representation, would you</p> <p>4 have taken that particular action into account in</p> <p>5 your damage analysis?</p> <p>6 A If you are asking me if the jury had</p> <p>7 said, if they had only done this one thing, there</p> <p>8 wouldn't have been a breach? I'm not really sure --</p> <p>9 because, I mean, this is -- this is kind of</p> <p>10 exceedingly hypothetical; right, so --</p> <p>11 Q If you -- if you -- if you knew that</p> <p>12 the jury had concluded that pursuing a jump seat war</p> <p>13 was a silly idea, it only would have antagonized the</p> <p>14 APA, and that's not part of any breach, would you</p> <p>15 have taken that ALPA action into consideration in</p> <p>16 conducting your damage analysis?</p> <p>17 MS. RODRIGUEZ: Objection.</p> <p>18 THE WITNESS: It -- it is difficult to</p> <p>19 say one way or the other because, first of all -- I</p> <p>20 mean, I'm going to try and answer your question but</p> <p>21 it is kind of hypothetical. If -- it is hard to</p> <p>22 imagine how exactly I would know that the jump seat</p> <p>23 war, not having been pursued had no impact on the</p> <p>24 jury's decision. So if there was some way in which</p> <p>25 the jury, you know, had come back and said, here are</p>
<p style="text-align: right;">130</p> <p>1 of fair representation?</p> <p>2 A It did not.</p> <p>3 Q Did you make any assumptions in your</p> <p>4 analysis about which of the options that ALPA had</p> <p>5 available to it but did not pursue constituted the</p> <p>6 breach of duty of fair representation?</p> <p>7 A I did not.</p> <p>8 Q You didn't make any assumptions one way</p> <p>9 or the other about that?</p> <p>10 A Did I make any assumptions about -- I</p> <p>11 don't believe I did, no. I mean, I -- I started</p> <p>12 from the point of view that these were actions that</p> <p>13 were available, and that had they done all of them,</p> <p>14 there wouldn't have been a breach. That's the only</p> <p>15 assumption I made.</p> <p>16 Q Well, you took all of the -- all of the</p> <p>17 actions that you were aware of that ALPA had</p> <p>18 available to it but did not pursue into account in</p> <p>19 your damage analysis; correct?</p> <p>20 A Sorry?</p> <p>21 Q You -- you took all of the actions that</p> <p>22 you understood ALPA had available to it but did not</p> <p>23 pursue into -- into consideration in conducting your</p> <p>24 damage analysis; correct?</p> <p>25 A I did.</p>	<p style="text-align: right;">132</p> <p>1 the five things they should have done, and if they</p> <p>2 had done them, we would not have found them in</p> <p>3 violation. I -- I might be able to -- you would</p> <p>4 obviously have to take that into consideration. I</p> <p>5 mean, there's -- there's -- I -- I don't remember</p> <p>6 the number, maybe ten things, ten or 11 things that</p> <p>7 are listed that were available as potential actions.</p> <p>8 If that list was only two long, you would probably</p> <p>9 spend a great deal more time trying to understand</p> <p>10 those two and all of their implications and why two</p> <p>11 out of the 11 were selected as having -- but, you</p> <p>12 know, I really -- I don't know how I can answer your</p> <p>13 question in any meaningful way because it is really</p> <p>14 kind of hypothetical.</p> <p>15 Q You are allowed to pose hypothetical</p> <p>16 questions to expert witnesses.</p> <p>17 A Yeah, but, I mean, this one is kind of</p> <p>18 hypothetical to the point where you can't really put</p> <p>19 any -- any meaningful answer to it. Right? You</p> <p>20 know, if the jury had all shown up wearing red one</p> <p>21 day, would that have changed your opinion? Well,</p> <p>22 probably not, right? You know. If they said in</p> <p>23 some way that one of these actions didn't constitute</p> <p>24 the breach or one of these inactions didn't</p> <p>25 constitute the breach, of course you would have to</p>

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<p style="text-align: right;">133</p> <p>1 take that into consideration. I mean, what I took 2 into consideration were the 11 that were left in 3 Allen Press' closing that were not objected to. 4 Q Well, in -- in doing that, were you 5 assuming that each of these was a predicate for the 6 jury's verdict that there was a breach of the duty 7 of fair representation? 8 A My only assumption was that each of 9 these actions was available to ALPA and they didn't 10 pursue them. 11 Q If -- if you knew because the jury was 12 provided a checklist and they were asked for each -- 13 each action, check whether it is a breach of the 14 duty of fair representation or not, and the jury had 15 checked three of the boxes as -- as being breaches 16 of the duty of fair representation, would you have 17 taken the other matters into account in your damage 18 analysis? 19 MS. RODRIGUEZ: I object to this whole 20 line of questioning because that wasn't the trial 21 below. Go ahead, to the extent you can answer. 22 THE WITNESS: Look, my assumption is 23 that -- that -- okay. Well, look. If the jury had 24 said, like, these three things, we don't think were 25 factors in the violation -- well, let me think about</p>	<p style="text-align: right;">135</p> <p>1 courses of action, what kind of impact could it 2 theoretically have had on the negotiations? So, 3 does that answer your question? I mean, if -- 4 Q Not really. 5 A Sorry. I'm trying my best here. I 6 really am. 7 Q What was it that you were trying to 8 analyze here? The -- the agreement that would have 9 resulted in the absence of a breach of the duty of 10 fair representation by ALPA? 11 A Correct. 12 Q So if you knew as a matter of fact that 13 with respect to seven of these ALPA actions that the 14 jury didn't view those as constituting breaches of 15 the duty of fair representation, would that have 16 changed your analysis? 17 MS. RODRIGUEZ: Let him finish his 18 question. 19 THE WITNESS: Yeah. Sorry. Now it's 20 my fault. 21 If -- if I knew that absolutely, then, of 22 course, it would have to be taken into 23 consideration. 24 BY MR. TOAL: 25 Q And how would you have taken that into</p>
<p style="text-align: right;">134</p> <p>1 this. I'm sorry, I'm going to have to -- 2 BY MR. TOAL: 3 Q That's fine. 4 A We are going to have to take some time 5 to think about this, because what are we saying? 6 If we have -- we have a violation on one hand, 7 and on the other we are saying I -- I -- had ALPA 8 done all of these things, the result would have been 9 X. Now, maybe they would have done those three 10 things anyways. I mean, of these three things -- 11 the question, you know, is, one, what is the impact 12 of these courses of action on the negotiation? And 13 the other is, what role did these things have in 14 ALPA's breach? And those are two completely 15 different questions, you know, like the jump seat 16 war. I mean, maybe the jury would have found that 17 the jump seat war is not something that ALPA needed 18 to do in order to represent its pilots fairly, but 19 that jump seat war was a course of action available 20 to ALPA and didn't pursue it, and had they done it, 21 it would have had an impact on the negotiation. So 22 it is difficult to sort of take those two things and 23 say, you know, am I analyzing the breach or am I 24 analyzing, you know, the impact of -- of ALPA's 25 inaction, or am I analyzing what each one of these</p>	<p style="text-align: right;">136</p> <p>1 consideration? 2 A I would have -- how would I have taken 3 it into consideration? Well, as a practical matter, 4 we would have had to say the agreement, rather than 5 being reached here, depending on what those three 6 actions were, there would have been less persuasive 7 force available in the negotiations. Conceivably 8 the point of agreement would move more towards the 9 American Airlines pilots' side of the -- side of the 10 equation, a list less favorable to the TWA pilots. 11 Q Would you have confined your analysis 12 to the three ALPA actions that the jury in this 13 hypothetical concluded constituted the breach of a 14 duty of fair representation? 15 A I would have. 16 Q Now when you talk in the first sentence 17 about the jury verdict, that the violation caused 18 injury to the TWA pilots, did you mean to suggest 19 the jury had concluded that all TWA pilots had been 20 injured? 21 A That some TWA pilots had been injured, 22 at least some. 23 Q At least some? 24 A Yes. 25 Q And do -- do you know what the jury</p>

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<p style="text-align: right;">137</p> <p>1 thought about how many TWA pilots had been injured?</p> <p>2 A I do not.</p> <p>3 Q And your analysis, your Salamat</p> <p>4 analysis, for instance, concludes that a substantial</p> <p>5 number of the TWA pilots suffered no damages;</p> <p>6 correct?</p> <p>7 A That's correct.</p> <p>8 Q And have you quantified how your</p> <p>9 Salamat list determines what percentage of the TWA</p> <p>10 pilots suffered no damages?</p> <p>11 A It does, but I -- I don't know what the</p> <p>12 number is off the top of my head.</p> <p>13 Q Have you quantified that?</p> <p>14 A Yes.</p> <p>15 Q And what percentage of the TWA pilots</p> <p>16 did you find sustained no damage?</p> <p>17 A I don't know off of the top of my head.</p> <p>18 I would have to refer to the data files to -- to</p> <p>19 actually give you an answer to that.</p> <p>20 Q My question is, did you go back and do</p> <p>21 that at some point? Even if you can't remember now,</p> <p>22 did you go and say --</p> <p>23 A Absolutely, yes.</p> <p>24 Q So at one time you knew what percentage</p> <p>25 your list indicated sustained no damages?</p>	<p style="text-align: right;">139</p> <p>1 that would have occurred absent a violation of the</p> <p>2 duty of fair representation?</p> <p>3 A No. I don't think everybody?</p> <p>4 Q Is there some particular experience</p> <p>5 that you have that other advisors wouldn't have?</p> <p>6 A Well, I've done extensive analysis on</p> <p>7 how lists have been merged and their impacts. That</p> <p>8 ability alone would differentiate me from a vast</p> <p>9 number of people because, you know, I'm the one</p> <p>10 whose been there showing people what the impacts are</p> <p>11 and seeing what their reactions are, so --</p> <p>12 Q What whose reactions are?</p> <p>13 A Pilot merger committees.</p> <p>14 Q And in how many of those cases were you</p> <p>15 analyzing what integration would have occurred</p> <p>16 absent a breach of the duty of fair representation?</p> <p>17 A None.</p> <p>18 Q Are you aware of any generally accepted</p> <p>19 methodology for estimating the seniority integration</p> <p>20 list that would have been agreed to in the absence</p> <p>21 of a duty -- breach of the duty of fair</p> <p>22 representation?</p> <p>23 A No, I'm not.</p> <p>24 Q Have you done anything to test the</p> <p>25 accuracy of the methodology that you used to attempt</p>
<p style="text-align: right;">138</p> <p>1 A At one time, I did. A few minutes</p> <p>2 later, I would have forgotten. But there is some</p> <p>3 number of pilots who were not damaged.</p> <p>4 Q Now, you say in the second paragraph on</p> <p>5 page two, there are two major parts involved in</p> <p>6 calculating the damages to TWA pilots as a result of</p> <p>7 the Air Line Pilot Association's (ALPA) violation of</p> <p>8 its dues of fair representation. The first part of</p> <p>9 the damage calculation is to estimate the</p> <p>10 integration that would have occurred absent the</p> <p>11 violation; correct?</p> <p>12 A That's correct.</p> <p>13 Q Now, what expertise do you have in</p> <p>14 estimating the integration that would have occurred</p> <p>15 absent a breach of the duty of fair representation?</p> <p>16 A Well, my experience in working with</p> <p>17 pilot negotiating committees, pilot merger</p> <p>18 committees. Review of all of the awards that have</p> <p>19 gone back some years to, I guess, post-deregulation.</p> <p>20 But primarily as my role as an advisor pilot, merger</p> <p>21 committees.</p> <p>22 Q And is it your view that anyone who</p> <p>23 served as -- as an advisor to pilot merger</p> <p>24 committees would have the requisite expertise to</p> <p>25 determine -- at least to estimate the integration</p>	<p style="text-align: right;">140</p> <p>1 to estimate the integration that would have been</p> <p>2 reached in the absence of a breach?</p> <p>3 A I'm sorry. Could I ask you to say that</p> <p>4 question again?</p> <p>5 Q Yeah. The question is whether you've</p> <p>6 done anything to test the accuracy of the</p> <p>7 methodology that you used to try and estimate the</p> <p>8 seniority integration list that would have been</p> <p>9 agreed to in the absence of a breach.</p> <p>10 MS. RODRIGUEZ: Objection.</p> <p>11 THE WITNESS: I'm going to say yes</p> <p>12 because the way in which the estimation was done was</p> <p>13 to compare the list -- a bunch of lists</p> <p>14 systematically to lists that have been obtained from</p> <p>15 other agreements and other mergers. So the -- the</p> <p>16 analysis that was done was effectively to say, is</p> <p>17 this list in any manner superior to any other list,</p> <p>18 given any other circumstance. And if it was, then</p> <p>19 we would assume that it might be far reaching as an</p> <p>20 assumption for a negotiated agreement. So, yeah, it</p> <p>21 was -- that was the basis of the entire exercise.</p> <p>22 BY MR. TOAL:</p> <p>23 Q And how did you undertake that</p> <p>24 analysis?</p> <p>25 A To compare a series of different lists</p>

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<p style="text-align: right;">141</p> <p>1 to other awards.</p> <p>2 Q Did you use any sort of quantitative</p> <p>3 metric in doing that analysis?</p> <p>4 A Well, compare -- as I believe the</p> <p>5 report went through some -- some pains to talk about</p> <p>6 the size at the top of the list, the size of the</p> <p>7 staple group, the size of the merged group. And</p> <p>8 that's the primary analysis that was done, to look</p> <p>9 at those three aspects of the Supplement CC list,</p> <p>10 versus other lists, versus proposed lists such as</p> <p>11 the plus 200 list, the damage model list, the -- the</p> <p>12 optimal list and so on. So that was, in effect, the</p> <p>13 -- the objective of the exercise, in estimating, was</p> <p>14 to say to what extent is any given list likely to</p> <p>15 have found a precedent in other situations.</p> <p>16 Q And what are some of the variables that</p> <p>17 you are aware of that can affect what a seniority</p> <p>18 integration looks like?</p> <p>19 A The variables that would affect what a</p> <p>20 seniority integration would look like? The most</p> <p>21 significant one would be the number of jobs and the</p> <p>22 type of equipment that each premerger group was</p> <p>23 operating.</p> <p>24 Q Any others that you are aware of?</p> <p>25 A Relative ages of the pilot groups,</p>	<p style="text-align: right;">143</p> <p>1 opposite, which was, to the extent that people's</p> <p>2 premerger expectations are tied to the equipment and</p> <p>3 jobs that they brought to the merger, I would not</p> <p>4 exclude that.</p> <p>5 BY MR. TOAL:</p> <p>6 Q Understood. But to the extent we are</p> <p>7 talking in pre-transaction career expectations about</p> <p>8 the prospects of the acquired airline on a</p> <p>9 standalone basis, you would not identify that as a</p> <p>10 factor that influenced the composition of prior</p> <p>11 seniority integration lists; is that correct?</p> <p>12 A Only in situations where one carrier</p> <p>13 had ceased to operate.</p> <p>14 Q So did you do anything when you were</p> <p>15 analyzing prior seniority integration lists to</p> <p>16 analyze these factors to try and develop a</p> <p>17 comparable group of seniority integrations?</p> <p>18 A I used all of the seniority</p> <p>19 integrations as benchmarks to say what a minimally</p> <p>20 acceptable negotiated list would have had to look</p> <p>21 like. And so I didn't prioritize any one type of</p> <p>22 merger according to these factors to any others.</p> <p>23 THE WITNESS: Anyone else getting</p> <p>24 hungry, because I'm feeling a little like it's lunch</p> <p>25 time, but, you know, I will leave it up to you guys.</p>
<p style="text-align: right;">142</p> <p>1 relative length of service of the pilot groups. The</p> <p>2 type of carriers, whether it's a major carrier or a</p> <p>3 regional carrier, for instance. Those could be</p> <p>4 factors. Whether it's an agreement or an</p> <p>5 arbitration. I think those would be the major</p> <p>6 variables.</p> <p>7 Q And are you excluding from your</p> <p>8 analysis, the pre-transaction career expectations?</p> <p>9 A If by expectations you mean the</p> <p>10 economics of each contributing carrier, yes. If you</p> <p>11 mean by expectations, how much work did they have at</p> <p>12 the time of the merger, then I wouldn't -- I</p> <p>13 wouldn't exclude that. I think I said it is the</p> <p>14 most important factor. I mean, to the extent that</p> <p>15 your expectations are to continue flying the</p> <p>16 equipment you have or to continue having access to</p> <p>17 the jobs you brought, then, yes.</p> <p>18 Q But in terms of variables that you</p> <p>19 would point to that explain prior seniority</p> <p>20 integration lists, you would exclude as a factor the</p> <p>21 pre-transaction career expectations of each pilot</p> <p>22 group; is that correct?</p> <p>23 MS. RODRIGUEZ: Objection to the</p> <p>24 question.</p> <p>25 THE WITNESS: I think I just said the</p>	<p style="text-align: right;">144</p> <p>1 MS. RODRIGUEZ: It is ten of 1:00 and</p> <p>2 we have been going for over three hours, so.</p> <p>3 MR. TOAL: We can go off the record.</p> <p>4 VIDEO SPECIALIST: The time is now</p> <p>5 12:50 and we are going off the video record.</p> <p>6 (Luncheon recess.)</p> <p>7 VIDEO SPECIALIST: The time is now 2:04</p> <p>8 and we are back on the video record.</p> <p>9 BY MR. TOAL:</p> <p>10 Q So, Mr. Salamat, before the break we</p> <p>11 were talking about the methodology that you used to</p> <p>12 try and estimate the integration that would have</p> <p>13 occurred absent any breach of the duty of fair</p> <p>14 representation. Do you remember that testimony?</p> <p>15 A I do.</p> <p>16 Q And is there a name for the methodology</p> <p>17 that you used to try and make that estimate?</p> <p>18 A No, there isn't.</p> <p>19 Q Are you aware of any known error rate</p> <p>20 for the methodology that you used to try and</p> <p>21 estimate the integration that would have occurred?</p> <p>22 A I don't believe I know of any known</p> <p>23 error rate.</p> <p>24 Q So you -- directing your attention to</p> <p>25 page two of your report, in the third paragraph you</p>

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<p style="text-align: right;">145</p> <p>1 say, a number of actions that ALPA failed to take in 2 representing the TWA pilots were brought out at 3 trial. Had these actions been employed, they would 4 have brought pressure on the Allied Pilots 5 Association, APA, while they negotiated seniority 6 with the TWA pilots. Do you see that language? 7 A Sorry. Where -- where? Oh, okay. 8 Yes. The third paragraph. Go ahead. 9 Q Okay. 10 A Yes. 11 Q Do you consider yourself an expert on 12 negotiation theory? 13 A I consider myself familiar with 14 negotiation theory. I don't think I can call myself 15 an expert. 16 Q And what's your basis for saying that 17 had -- had these actions been employed, they would 18 have brought pressure on the Allied Pilot's 19 Association and their negotiations with the TWA 20 pilots? 21 A What's my basis for saying they would 22 have brought pressure? 23 First, and probably the most important, 24 experience of having been in negotiations when other 25 groups brought pressure to bear in the form of, you</p>	<p style="text-align: right;">147</p> <p>1 Q And in which cases that you've been 2 involved with has one of the parties to a 3 negotiation pursued litigation? 4 A When I was working with the Canadian 5 Air Line Pilot's Association -- Air Line Pilot's 6 Association, Canadian Airlines, that would be 7 Canadian Airlines pilots. After having received an 8 unfavorable seniority integration under an 9 arbitrator named Mitchnick, they went through a 10 series of negotiations where they were threatening 11 to take the case to the Industrial Relations Board, 12 and negotiations were going on during that period. 13 So that was one that, you know, is memorable. 14 Q And with respect to that situation, did 15 the threats of litigation precede an agreement in 16 negotiations between the parties? 17 A No. No, they did not. They -- they 18 ultimately ended up in litigation. 19 Q Do you have any other experiences 20 dealing with seniority integration where one of the 21 parties to a negotiation threatened litigation? 22 A Threatened litigation? I mean, I've 23 been involved in a few where they actually launched 24 litigation, and so presumably threats preceded the 25 launching.</p>
<p style="text-align: right;">146</p> <p>1 know, litigation, or sanctions, or some other form 2 of pressure. 3 Secondary, everything I've been taught in 4 negotiation in terms of what it is that moves 5 parties from one position to another. 6 Those two areas would be the vast majority 7 of -- of my reasoning behind that statement. 8 Q Anything else you can think of as you 9 sit here today? 10 A Well, training, teaching, experience, 11 common sense. 12 Q Anything else? 13 A I -- I can't think of anything at the 14 moment. I mean, I think those three would encompass 15 most of the -- the reasoning behind that statement. 16 Q And when you refer to teaching, you are 17 not referring to teaching that you've done; correct? 18 A No. I'm -- I'm talking about training 19 in negotiation. 20 Q Training that you've received from 21 others? 22 A Training that I've received, yes. 23 Q And you reference your experience in 24 which litigation has been pursued; is that correct? 25 A Yes.</p>	<p style="text-align: right;">148</p> <p>1 Q Okay. So let's -- let's focus first on 2 the ones where litigation was actually pursued. 3 Other than the Canadian Airlines situation, 4 are there other situations in which litigation was 5 pursued? 6 A Litigation was pursued in the America 7 West/USAirways merger. 8 Q And did the pendency of litigation in 9 that case result in a negotiated agreement? 10 A Not so far. I mean, it's an ongoing 11 case. 12 Q Other than the Canadian Airlines and 13 American West/USAir situations, any others that 14 you've been involved in in which litigation's been 15 pursued? 16 A Yeah. The connector agreement between 17 Air Canada and the feeder airlines. There was a 18 class action that was pursued following that 19 seniority non-integration. 20 There was litigation -- well, I guess that's 21 not really necessarily stemming directly from a 22 seniority integration, but the whole age 60 case I 23 testified in -- to at the -- in a Canadian Human 24 Rights Tribunal was actually related directly to the 25 merger of Canadian Air Canada because there was two</p>

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<p style="text-align: right;">149</p> <p>1 different retirement ages in the two contracts, so 2 there was that. There may be others that I'm not 3 thinking of right now. You know, the Canadian 4 Airlines case involved probably 15 different suits 5 that had been filed in various courts, all the way 6 up to the Supreme Court of Canada, so -- 7 Q And the connector litigation that you 8 mentioned, did that result in a negotiated agreement 9 between the parties concerning seniority 10 integration? 11 A Did not. 12 Q So with respect to threatened 13 litigation, are you aware -- have you been involved 14 in any situations in which the threat of litigation 15 has led to a negotiated agreement between parties 16 regarding seniority integration? 17 A I am not. 18 Q And when you talk about actions by 19 ALPA, had they been pursued, bringing pressure on 20 the APA, do you have any basis for that statement 21 linked to APA's particular circumstances? 22 A Sorry. I'm going to have to ask you to 23 put that question some other way. I'm not sure I 24 understand. 25 Q So when you talk about actions that</p>	<p style="text-align: right;">151</p> <p>1 Q Do you have any information about 2 whether the APA subjectively believed it was being 3 fair? 4 A Well, they believed they were being 5 fair, and then they changed their position. They 6 believed they were being fair again. And, you know, 7 so at every point in time they believed they were 8 attempting to be fair, so -- 9 Q And the APA conduct that you referred 10 to where the APA was improving the offers it was -- 11 it was making, isn't that a normal incident of 12 negotiation conduct? 13 A I don't know that I would want to sort 14 of say it wasn't normal given that this was a very 15 unusual circumstance. I mean, parties certainly do 16 improve their offers when they feel like there is 17 either pressure to do so or that the possibility of 18 reaching an agreement wouldn't -- wouldn't be there 19 unless they change their offer in some -- some 20 meaningful way. But is it normal for a -- a group 21 to -- to improve their offer? Under these 22 circumstances, I -- I couldn't say because these 23 circumstances are quite unique. 24 Q Okay. What about these circumstances 25 is unique?</p>
<p style="text-align: right;">150</p> <p>1 ALPA didn't pursue as something that would have 2 brought pressure on the APA, do you have any basis 3 for that statement specific to the APA itself? 4 A Basis for that statement specific to 5 the APA itself? 6 Well, yeah, largely APA's conduct throughout 7 the negotiations, number one. They had continually 8 improved their -- their settlement offer to the TWA 9 pilots under the force of whatever pressure the TWA 10 pilots were able to bring. That's probably the main 11 thing I would refer to. There is also their own 12 statements about wanting to do what was fair. And 13 so I assume from that statement that they wanted to 14 be fair, and that they were ultimately, you know, 15 prevented from -- from really examining their 16 notions of fairness because of lack of pressure to 17 do so, so -- 18 Q That's -- that's an assumption that you 19 make? 20 A That's -- those -- those are the things 21 specific to the APA that I considered, yes. 22 Q And the last one, was that an 23 assumption that you made? 24 A It's not an assumption. It's what they 25 said. They said they wanted to be fair.</p>	<p style="text-align: right;">152</p> <p>1 A Well, what's unique about these 2 circumstances is that the APA believed they had, to 3 some degree, the ability to act unilaterally. 4 Q Anything else? 5 A No. That one fact alone makes this a 6 somewhat different situation. 7 Q In any of the other seniority 8 integrations that you've been involved with, has one 9 of the parties believed that it had a right to act 10 unilaterally with respect to seniority integration? 11 A Yeah. Well, I mean, you could consider 12 the conduct of the America West pilots and the 13 USAirways pilots in their current situation. Both 14 parties believe they have the right to act 15 unilaterally. The America West pilots believe they 16 have a right to something known as the Nicolau list. 17 And the USAirways pilots believe they have a right 18 to the Usapa list, and both groups believe that, 19 without the consent of the other, those lists can be 20 imposed on the other, so -- 21 Q And did either of those involve 22 situations in which one union believed that it had 23 the ability to dictate what the seniority 24 integration list would be from the outset? 25 A Canadian Airlines, Air Canada, one</p>

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<p style="text-align: right;">153</p> <p>1 group believed they had the right to -- to impose a</p> <p>2 list on the other. Air Canada pilots believed they</p> <p>3 had the right to determine what the seniority</p> <p>4 integration of the Canadian Airline pilots would be.</p> <p>5 Q So the factor that you indicated made</p> <p>6 the TWA/American Airlines situation unique is that</p> <p>7 the APA believed it had a right to act unilaterally;</p> <p>8 right?</p> <p>9 A In a negotiation. Not in litigation.</p> <p>10 Q In a negotiation?</p> <p>11 A Yeah. I mean, I'm unaware of a</p> <p>12 negotiation where one party believed they had the</p> <p>13 right to act unilaterally.</p> <p>14 Q Now, with respect to the specific ALPA</p> <p>15 actions or inactions that you identify in your</p> <p>16 report, do you have any information specific to the</p> <p>17 APA about how it was likely to respond to those</p> <p>18 actions?</p> <p>19 A Specific? No. I don't believe I have</p> <p>20 any information about how they would have responded</p> <p>21 specifically to any one of these things.</p> <p>22 Q Now, you say in the third paragraph on</p> <p>23 page two, as the APA has some ability to act</p> <p>24 unilaterally and the TWA had no automatic right to</p> <p>25 have the matter decided by a neutral party, the</p>	<p style="text-align: right;">155</p> <p>1 couldn't just staple all of the TWA pilots.</p> <p>2 Q And do you have any information that</p> <p>3 the APA -- you are referring to notes from a meeting</p> <p>4 of the APA's Boston domicile; correct?</p> <p>5 A That sounds -- I believe that's</p> <p>6 correct, yes.</p> <p>7 Q And that's cited in your report?</p> <p>8 A Yes. I think I might have cited that</p> <p>9 in the report.</p> <p>10 Q Okay. Do you have any information</p> <p>11 about whether the view that the APA owed a duty of</p> <p>12 fair -- withdrawn.</p> <p>13 Is your understanding that the statements from</p> <p>14 that meeting reflected that the APA had a duty of</p> <p>15 fair representation to the pilots of TWA?</p> <p>16 A The only -- my only understanding was</p> <p>17 that the right to staple the TWA pilots appeared not</p> <p>18 to be absolute in their own court, so --</p> <p>19 Q And do you know whether any views</p> <p>20 expressed in that meeting represented the views of</p> <p>21 the APA overall?</p> <p>22 A I assumed that whoever was speaking was</p> <p>23 speaking for the APA overall, but it was the MEC</p> <p>24 chair, I believe, who was answering the questions,</p> <p>25 so I assume he spoke for the association.</p>
<p style="text-align: right;">154</p> <p>1 effect additional pressure would have had can be</p> <p>2 considered a problem of increased uncertainty in</p> <p>3 estimating how the parties as agents would have</p> <p>4 responded and ultimately decided given that</p> <p>5 uncertainty. Do you see that language?</p> <p>6 A I do.</p> <p>7 Q Why do you say the APA had some ability</p> <p>8 to act unilaterally?</p> <p>9 A Well, they had, in their contract, a</p> <p>10 clause, and I don't know that I know the specific</p> <p>11 language of the clause off the top of my head, but</p> <p>12 that they had the right to staple any pilots who</p> <p>13 came from an airline in an acquisition to the bottom</p> <p>14 of their list. However, they had also stated at the</p> <p>15 same time that this right wasn't absolute. So where</p> <p>16 that -- whether or not they had the right, I -- I</p> <p>17 don't know has ever been truly tested.</p> <p>18 Q And who from the APA said that that</p> <p>19 right wasn't absolute?</p> <p>20 A There was a -- I believe it was a</p> <p>21 communication between the MEC and their pilots in</p> <p>22 the lead-up to the merger stating that the APA had a</p> <p>23 duty of fair representation to the pilots, and that</p> <p>24 ultimately the matter could be decided by a judge,</p> <p>25 and so they'd stated a number of reasons why they</p>	<p style="text-align: right;">156</p> <p>1 Q And do you know whether that person had</p> <p>2 any legal background?</p> <p>3 A I do not.</p> <p>4 Q Okay. Are you aware of any other</p> <p>5 limits on the APA's ability to act unilaterally?</p> <p>6 A Legal limits or practical limits? I</p> <p>7 mean --</p> <p>8 Q Any limits at all.</p> <p>9 A I considered the fact that they wanted</p> <p>10 to do a fair integration would be a limit on their</p> <p>11 ability to act unilaterally, and you can't really</p> <p>12 act unilaterally if you want to be fair. So they</p> <p>13 said all throughout that they wanted a fair</p> <p>14 integration of the TWA pilots. So that would</p> <p>15 presume -- in itself, would forestall acting</p> <p>16 unilaterally.</p> <p>17 Q Anything else that you regard as a</p> <p>18 limit on the APA's ability to act unilaterally?</p> <p>19 A No. Primary the latter.</p> <p>20 Q And when you say primarily, it sounds</p> <p>21 like you have other things in mind. Is there</p> <p>22 anything else?</p> <p>23 A The former. They didn't believe they</p> <p>24 had an absolute ability, in their own words, and</p> <p>25 that they wanted to be fair.</p>

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<p style="text-align: right;">157</p> <p>1 Q So beyond what you've testified to</p> <p>2 previously, is there anything else you would point</p> <p>3 to as a limit on the APA's ability to act</p> <p>4 unilaterally?</p> <p>5 A Not that I'm aware of.</p> <p>6 Q And when you say the -- when you say</p> <p>7 that TWA had no automatic right to have the matter</p> <p>8 of seniority integration decided by a mutual party,</p> <p>9 isn't it -- isn't it a fact that TWA didn't have any</p> <p>10 right, automatic or otherwise, to have the matter</p> <p>11 decided by a neutral party?</p> <p>12 A Well, what I mean is by they had no</p> <p>13 automatic right, there is nothing that would have</p> <p>14 prevented the APA from agreeing to -- to have the</p> <p>15 matter decided by a neutral, and then they would</p> <p>16 have had the right. So they had no automatic right</p> <p>17 to end up there, but that -- that -- there is no</p> <p>18 reason why that couldn't have been a negotiated</p> <p>19 agreement.</p> <p>20 Q And is your -- do you have any</p> <p>21 understanding that the APA agreed to arbitrate the</p> <p>22 issue of seniority integration?</p> <p>23 A I'm sorry?</p> <p>24 Q Do you have any understanding that the</p> <p>25 APA agreed to integrate the -- to arbitrate the</p>	<p style="text-align: right;">159</p> <p>1 by other means. So, no. The only way I can say</p> <p>2 that they could have -- that I know they could have</p> <p>3 achieved an arbitration with the APA would have been</p> <p>4 to achieve that in a negotiation.</p> <p>5 Q Now, in your report at the bottom of</p> <p>6 page two, you say, from the point of view of the TWA</p> <p>7 pilots, there were a range of possible outcomes</p> <p>8 ranging from the least desirable, a list just</p> <p>9 slightly better than Supplement CC, to an upper</p> <p>10 limit, which is defined as the list an arbitrator</p> <p>11 would most likely have imposed.</p> <p>12 Do you see that language?</p> <p>13 A I do.</p> <p>14 Q Now, why would the least desirable</p> <p>15 result have been no change from supplement CC at</p> <p>16 all?</p> <p>17 MR. JACOBSON: I object to the form of</p> <p>18 the question. That misstates what the report</p> <p>19 language as read says.</p> <p>20 THE WITNESS: Yeah. Can I get you to</p> <p>21 ask that question differently, because I don't think</p> <p>22 that's what I -- what I actually said here.</p> <p>23 What I said is, there is a range of possible</p> <p>24 outcomes ranging from the least desirable, a list</p> <p>25 just slightly better than Supplement CC, so not</p>
<p style="text-align: right;">158</p> <p>1 issue of seniority integration?</p> <p>2 A No, they didn't, as far as I know.</p> <p>3 Q And if the APA was unwilling to agree</p> <p>4 to arbitration of seniority integration, is it your</p> <p>5 understanding that TWA and its pilots would have no</p> <p>6 ability to compel such an arbitration?</p> <p>7 A In the absence of -- you mean, you are</p> <p>8 talking about what actually occurred, or would the</p> <p>9 TWA pilots have had an ability to compel arbitration</p> <p>10 given this list of -- of actions?</p> <p>11 Q My question is -- is, in the absence of</p> <p>12 agreement by APA to arbitrate, are you aware of any</p> <p>13 ability that the TWA pilots had to --</p> <p>14 A -- to compel?</p> <p>15 Q -- legally compel the APA to</p> <p>16 participation in an arbitration?</p> <p>17 A My understanding is the history, having</p> <p>18 played out as it did, they didn't.</p> <p>19 Q I understand that, as a matter of</p> <p>20 history, what happened. But are you aware of any</p> <p>21 legal mechanism through which the TWA pilots could</p> <p>22 have forced the APA to arbitration?</p> <p>23 A I'm -- I'm -- I'm not -- I'm not a</p> <p>24 lawyer, so I, you know, I couldn't really speculate</p> <p>25 on whether they had any kind of ability to compel it</p>	<p style="text-align: right;">160</p> <p>1 Supplement CC.</p> <p>2 BY MR. TOAL:</p> <p>3 Q I understand that you are saying that</p> <p>4 the bottom end of the range would be something</p> <p>5 better than Supplement CC; correct?</p> <p>6 A Right.</p> <p>7 Q Is that accurate?</p> <p>8 A That's -- that's accurate, yes.</p> <p>9 Q Okay. Now, why I -- why don't you</p> <p>10 contemplate the possibility that even if ALPA had</p> <p>11 taken all of these actions, that the APA would not</p> <p>12 have been willing to offer a list better than</p> <p>13 Supplement CC?</p> <p>14 A I -- I didn't decide that. The jury</p> <p>15 decided that.</p> <p>16 Q So is your -- is your decision to adopt</p> <p>17 a lower bound of a list better than CC based on your</p> <p>18 understanding of the jury verdict?</p> <p>19 A That's correct. And the instructions</p> <p>20 to the jury, and the closing arguments.</p> <p>21 Q And you define here an upper limit,</p> <p>22 essentially, the best list the TWA pilots could have</p> <p>23 expected of something that was equivalent to the</p> <p>24 result that would have been expected in an</p> <p>25 arbitration decision; correct?</p>

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<p style="text-align: right;">161</p> <p>1 A That's correct.</p> <p>2 Q But you also have something in your</p> <p>3 report that you call a fairness model; correct?</p> <p>4 A Yes.</p> <p>5 Q And the damages you attribute based on</p> <p>6 the fairness model are higher than those that you</p> <p>7 calculate based on the arbitrated model; correct?</p> <p>8 A That's correct.</p> <p>9 Q Now, if you have established an upper</p> <p>10 bound in your report on damages of what the expected</p> <p>11 result would have been in an arbitration decision,</p> <p>12 why do you present an even higher model based on</p> <p>13 what you call the fairness list?</p> <p>14 A Well, the fairness list is a test for</p> <p>15 the arbitrated list. And one of the tests of an</p> <p>16 arbitrated list is would it -- would it have been</p> <p>17 considerably more fair or would it have flipped the</p> <p>18 balance and been unfair to the American Airlines</p> <p>19 pilots in any way? And so the answer would be that</p> <p>20 any -- any list that was better than the fairness</p> <p>21 list would not reasonably be achievable in</p> <p>22 arbitration, and you wouldn't want to necessarily</p> <p>23 use it as a goal post. And so the fairness list has</p> <p>24 that one advantage to it. It has that one -- that</p> <p>25 one main purpose which is to test the likelihood of</p>	<p style="text-align: right;">163</p> <p>1 Q So that's not something you are</p> <p>2 presenting as a basis for measurement of damages in</p> <p>3 this case; correct?</p> <p>4 A No.</p> <p>5 Q You are not doing that; correct?</p> <p>6 A I'm not doing that.</p> <p>7 Q Turning over to page three of your</p> <p>8 report, at the top of that page, the first full</p> <p>9 sentence, you say, my objective in this matter is to</p> <p>10 estimate as accurately as possible where in that</p> <p>11 range an agreement between the TWA pilots and the</p> <p>12 APA would have fallen given effective representation</p> <p>13 by ALPA.</p> <p>14 Do you see that language?</p> <p>15 A I do.</p> <p>16 Q And do you have any statistical data</p> <p>17 regarding how accurately that estimate can be made?</p> <p>18 A I do not.</p> <p>19 Q And did you try and quantify the</p> <p>20 probability that the APA and the TWA MEC would have</p> <p>21 agreed on the Salamat model as opposed to any other</p> <p>22 point in the range?</p> <p>23 A Well, I believe I did by assigning</p> <p>24 possibilities that each individual action could have</p> <p>25 contributed to some change in the perception of --</p>
<p style="text-align: right;">162</p> <p>1 an arbitrated list. So if the damages under the</p> <p>2 arbitrated list are less than they are under the</p> <p>3 optimal list or the fairness list, then it is within</p> <p>4 a range that I would consider possible. Anything</p> <p>5 better than that, probably not. So that's one</p> <p>6 reason for the -- for the fairness list.</p> <p>7 The second is, like I mentioned, that no</p> <p>8 matter what the damages end up being or what damages</p> <p>9 would end up being awarded, that the fairness list</p> <p>10 is the fairest way to distribute damages to</p> <p>11 individuals rather than -- but not necessarily to</p> <p>12 calculate what those damages are on an aggregate</p> <p>13 basis. But if pilot X was harmed by \$10,000 under</p> <p>14 the fairness list, out of a total pool of damages of</p> <p>15 100 million, then that would be the way in which you</p> <p>16 would pro rate them would be my contention. So it</p> <p>17 serves as a litmus test and a method of</p> <p>18 distribution.</p> <p>19 Q So to make sure I understand what you</p> <p>20 are contending in your report, is it accurate to say</p> <p>21 that you are not contending that without regard to</p> <p>22 what ALPA did, that the TWA pilots could have</p> <p>23 achieved through negotiation a list that was as</p> <p>24 favorable as the fairness list?</p> <p>25 A I don't believe they could have, no.</p>	<p style="text-align: right;">164</p> <p>1 of the TWA pilots by the APA or some -- affected</p> <p>2 some change in the negotiating stance of the APA.</p> <p>3 So I did attempt to quantify the effect that those</p> <p>4 actions would have.</p> <p>5 Q My question is whether you attempted to</p> <p>6 quantify the probability that had ALPA not breached</p> <p>7 a duty of fair representation, that the agreement</p> <p>8 that the TWA MEC and the APA would have reached</p> <p>9 would have resembled the Salamat model.</p> <p>10 A I did.</p> <p>11 Q And what was the probability that you</p> <p>12 determined that they would have ended up with the</p> <p>13 Salamat model?</p> <p>14 A 73 percent, I believe.</p> <p>15 Q Did you assign any probability to the</p> <p>16 likelihood that the TWA MEC and the APA would have</p> <p>17 agreed upon a seniority integration list that</p> <p>18 resembled Supplement CC plus 200?</p> <p>19 A I would assume that that one would be</p> <p>20 closer to a hundred but, I -- I -- I mean, I don't</p> <p>21 recall what the actual probability was, but I did</p> <p>22 attempt to estimate it.</p> <p>23 Q Well, I'm confused because you said</p> <p>24 that you assigned the probability in the range of</p> <p>25 distribution for the Salamat model at 73 percent.</p>

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<p style="text-align: right;">165</p> <p>1 A Yes.</p> <p>2 Q So I would have thought that the</p> <p>3 probability of obtaining any other list would</p> <p>4 necessarily have to be a hundred minus 73 percent.</p> <p>5 Is that incorrect?</p> <p>6 A No. That is incorrect.</p> <p>7 Q Why is that incorrect?</p> <p>8 A Well, if I take, for example, any one</p> <p>9 individual action and I say it has got a ten percent</p> <p>10 probability all on its own of having led to the</p> <p>11 Salamat list, that ten percent is predicated on the</p> <p>12 Salamat list being the agreement. If I said, what's</p> <p>13 the probability that that particular action would</p> <p>14 have resulted in a Supplement CC plus 200 list, it</p> <p>15 would be higher than ten percent. So you can never</p> <p>16 say for certain that something is going to be a</p> <p>17 hundred percent. It might mathematically add up to</p> <p>18 a hundred percent, but because you can't say for</p> <p>19 certain it would approach zero, depending on if you</p> <p>20 look at it one way or approach a hundred if you look</p> <p>21 at it the other way, but you couldn't say with</p> <p>22 absolute certainty that that would be the result.</p> <p>23 You can say it is certainly near a hundred percent.</p> <p>24 Q You might be answering a question</p> <p>25 that's different than the one I intended to ask.</p>	<p style="text-align: right;">167</p> <p>1 hundred percent chance that that could have been an</p> <p>2 agreement. In order to figure out what the</p> <p>3 probability of any other agreement is, you have to</p> <p>4 measure the -- the distance of that agreement from</p> <p>5 Supplement CC. Primarily, I mean, the -- the -- the</p> <p>6 easiest measure in this case is to -- to examine the</p> <p>7 size of the staple and say, you know, every time</p> <p>8 that staple gets smaller, the chances that the --</p> <p>9 the APA would agree to it gets less, unless there is</p> <p>10 sufficient pressure that they would be compelled to</p> <p>11 that position and there is sufficient reasoning for</p> <p>12 that position. So I don't think that some of the</p> <p>13 probabilities is a hundred percent. It's not --</p> <p>14 it's not -- it is not a dice-throwing exercise.</p> <p>15 Right? So even -- even in throwing dice, it is</p> <p>16 never going to be a hundred percent probability that</p> <p>17 you are going to roll a six. You could roll fives</p> <p>18 for a very long time. You could roll something</p> <p>19 other than a six for a very long time. The</p> <p>20 probability approaches zero, but it's never going to</p> <p>21 be zero.</p> <p>22 Q What was the -- the top staple that you</p> <p>23 used in the Salamat model?</p> <p>24 A I would -- I would have to look at the</p> <p>25 report. It's -- it's the -- it's -- it's -- I'm</p>
<p style="text-align: right;">166</p> <p>1 A It could be.</p> <p>2 Q I'm asking -- you've hypothesized a</p> <p>3 situation where ALPA took additional actions;</p> <p>4 correct?</p> <p>5 A That's correct.</p> <p>6 Q And then you are trying to figure out</p> <p>7 that if ALPA -- if ALPA had taken those actions,</p> <p>8 you're hypothesizing that some seniority integration</p> <p>9 list different than Supplement CC would have</p> <p>10 resulted; correct?</p> <p>11 A That's correct.</p> <p>12 Q And if we are looking at probabilities</p> <p>13 across the range of what you think possible</p> <p>14 agreements are, ranging from something better than</p> <p>15 Supplement CC on the low side to an arbitrated</p> <p>16 result on the other side, in probabilistic terms,</p> <p>17 the total distribution of likelihood of agreements</p> <p>18 has to add up to a hundred percent; correct?</p> <p>19 A No, I don't -- I don't believe it does.</p> <p>20 You know, there -- there -- there is a hundred</p> <p>21 percent chance that they could have agreed to</p> <p>22 Supplement CC itself. That much we know; right?</p> <p>23 Because that's -- they had already -- the APA had</p> <p>24 already agreed to it. Had the TWA pilots decided to</p> <p>25 agree to it, they could have, right? So there is a</p>	<p style="text-align: right;">168</p> <p>1 sorry, the top staple?</p> <p>2 Q The top staple.</p> <p>3 A The top -- I'm not sure what you mean</p> <p>4 by top staple?</p> <p>5 Q Do you -- in your Salamat list, do you</p> <p>6 have a certain number of American Airline pilots who</p> <p>7 are at the top of the list?</p> <p>8 A The top of the list, right. I think</p> <p>9 it's -- I think it's the same number that was there</p> <p>10 on Supplement CC plus a handful more, like under a</p> <p>11 hundred.</p> <p>12 Q Okay. So you, in your Salamat model,</p> <p>13 didn't deviate significantly from Supplement CC in</p> <p>14 estimating what -- how many American Airline pilots</p> <p>15 would have been left at the top of the list;</p> <p>16 correct?</p> <p>17 A Not significantly, no.</p> <p>18 Q What was the bottom staple that you</p> <p>19 used on the Salamat list?</p> <p>20 A I would have to look at the report. I</p> <p>21 don't want to pull a number out of the --</p> <p>22 Q Well, go ahead and take a look, and let</p> <p>23 me know what that number is.</p> <p>24 A 464.</p> <p>25 Q And how did you derive that number?</p>

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<p style="text-align: right;">169</p> <p>1 A That number was derived on a reduced 2 job count of TWA pilots, the number of captains and 3 FOs based on a reduced fleet being merged. And so 4 the 464 was really a remainder rather than 5 specifically a staple. 6 Q Did you have any information -- what 7 information did you have about offers made by the 8 TWA MEC as to how many TWA pilots it was willing to 9 have stapled at the bottom of the list? 10 A I -- I had the rightful place proposal, 11 which had 200-and-some-odd. And then I believe 12 there was an earlier offer that had been made with, 13 I think, roughly 400-and-some number of pilots at 14 the bottom number. 15 Q And does your bottom staple derive from 16 what you understood the highest number of TWA pilots 17 that the TWA MEC proposed to staple? 18 A No. 19 Q If you had understood that the TWA MEC 20 had proposed stapling close to 600 pilots, would 21 that have affected the bottom staple that you used 22 in your Salamat model? 23 A No. That proposal would have been made 24 in the context of ALPA's violation, so, you know, 25 I -- I wouldn't have. I would have -- the way I</p>	<p style="text-align: right;">171</p> <p>1 it was willing to have stapled at the bottom of the 2 list? 3 A I'm sorry. I don't -- I don't know 4 that I've seen them say that there is a smallest 5 number that they were willing to have stapled. 6 Q Well, in any -- 7 A I mean, there was -- there was 8 positions that they gave, and presumably Supplement 9 CC was the smallest one that they can -- they -- 10 they were willing to do given the circumstances up 11 to that point. I mean, whether they were willing to 12 go smaller than that, who can say? I don't know. I 13 wasn't there. 14 Q Do you have any information suggesting 15 any information particular to the APA suggesting 16 that, had circumstances been different, they would 17 have been willing to allow fewer TWA pilots to be 18 stapled than appeared in Supplement CC? 19 A I mean, other than their desire to 20 produce fair integration, I can think of nothing 21 else that -- that they ever said. They said, well, 22 we would be willing to go down to a specific number. 23 I -- I haven't seen anything of that sort. 24 Q Well, have you seen anything, any 25 statement by any APA representative where they said</p>
<p style="text-align: right;">170</p> <p>1 constructed the list was to say what is a reasonable 2 integration, what it would have been, captains and 3 first officers based on a reduced fleet, and the 4 staple size just being derivative of that primary. 5 Q And can you explain specifically when 6 you talk about the staple size being derivative, how 7 it -- how it ends up that you come up with that 8 remainder? 9 A Well, let me go back to the report. 10 The APA merged 940 TWA pilots, and the fact 11 that there was 939 MD90 and 767 captains on the TWA 12 list. So the APA was prepared to accept the MD90 13 and 767 positions were ongoing positions, what they 14 call sustainable. And so -- but they only gave them 15 credit for captains. And so to say that under all 16 the pressure that ALPA could have brought to bear 17 would they have accepted the fact that FOs were also 18 required to fly those planes, that would seem a 19 reasonable place for them to agree. And so the 20 number of FOs added into that -- into that 939 21 results in 1,873 pilots being merged. The top of 22 the list remaining roughly the same and the staple 23 being reduced by 464. 24 Q What's your understanding of the 25 smallest number of TWA pilots that the APA indicated</p>	<p style="text-align: right;">172</p> <p>1 there is any circumstance under which they would 2 have been willing to staple fewer pilots -- fewer 3 TWA pilots than appeared in Supplement CC? 4 A I think every offer they made, the 5 number of pilots they stapled, they -- they -- they 6 said was the -- the smallest number they were going 7 to staple, and then they continued to have that 8 staple shrink over time. So, you know, I don't know 9 what anyone could have said that would have made me 10 think that they wouldn't have gone further in the 11 negotiations than they did. 12 Q Well, for instance, there could be a 13 secret APA communication that is produced in 14 discovery where they said, we keep telling the TWA 15 MEC we are insisting on stapling at least this many 16 pilots, but our fallback position is we agree to 17 staple 200 less than that? 18 A I'm -- I'm not aware of any such 19 secret, and I don't know that in the absence, you 20 know, in the absence of ALPA having done some of the 21 things that are talked about them having not done, 22 that it would really even be all that meaningful 23 because, again, you are talking about something -- 24 some -- some -- a position that people have in the 25 absence of basically one side having manned up. So,</p>

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<p style="text-align: right;">173</p> <p>1 you know, it is kind of -- it's kind of an abstract 2 question to ask.</p> <p>3 Q So whether it is abstract or not, my 4 question is, are you aware of any statement by any 5 APA representative indicating that they would have 6 been willing to accept a staple of fewer TWA pilots 7 than were stapled in Supplement CC?</p> <p>8 A I am not aware of -- of any -- any 9 internal communications or anything they had where 10 they said we were willing to staple less than we are 11 going to staple in this proposal.</p> <p>12 Q Any testimony from APA representatives 13 that -- that suggest they would have been willing to 14 staple fewer TWA pilots than were stapled in 15 Supplement CC that you are aware of?</p> <p>16 A Not -- not that I'm aware of.</p> <p>17 Q On page two of your report, you, in 18 figure one, set forth a list of ALPA actions that 19 you seemingly think ALPA had available to it that it 20 didn't pursue; correct?</p> <p>21 A This is the list of available actions 22 that were cited in Allen Press's closing.</p> <p>23 Q And -- and that's your source for 24 constructing this list?</p> <p>25 A That is my source for this list.</p>	<p style="text-align: right;">175</p> <p>1 this was one of the -- one of the things that was 2 brought up as having contributed to that breach. So 3 I -- you know, the jury has already decided that. 4 Not me. All I said is this is one action that, had 5 they not done it, would have changed the dynamics of 6 the negotiation.</p> <p>7 Q Well, the jury didn't say that ALPA, 8 insisting on waiving scope, constituted a breach of 9 the duty of fair representation; right?</p> <p>10 A No. But they said all of these things 11 did.</p> <p>12 Q Where did they say that?</p> <p>13 A Well, presumably all of the -- well, 14 actually, what they said was ALPA breached its duty 15 of fair representation, and these were the list of 16 things that were brought out as having constituted 17 that breach, so --</p> <p>18 Q But you don't know if the jury agreed 19 with every one of those things.</p> <p>20 A I do not know whether the jury agreed 21 with every one of these, that's true.</p> <p>22 Q So what I'm asking is, for purposes of 23 your analysis, are you assuming that the jury did 24 conclude that ALPA insisting on waiving scope was a 25 component of the breach of the duty of fair</p>
<p style="text-align: right;">174</p> <p>1 Q So in the -- the first item you list 2 is, insists on waiving scope; correct?</p> <p>3 A Yes.</p> <p>4 Q And what is your understanding of what 5 ALPA failed to do with respect to insist on waiving 6 scope?</p> <p>7 A Well, perhaps that's poorly -- poorly 8 worded from the point of view of saying it failed to 9 do it. What they did was they insisted that the 10 group waive scope. It is debatable whether they had 11 to or whether they didn't. It is certainly on the 12 record that some of the TWA representatives didn't 13 want to. And so that is one action that ALPA either 14 did or didn't take, depending on how you phrase the 15 action that was cited in the closing.</p> <p>16 Q So that action -- your understanding of 17 that action is that ALPA insisted that the TWA MEC 18 waive its scope and successorship positions; 19 correct?</p> <p>20 A Yes.</p> <p>21 Q And do you view that as a component for 22 purposes of your analysis of a breach of the duty of 23 fair representation by -- by ALPA?</p> <p>24 A No. I -- I -- well, obviously, it is 25 because the jury found that there was a breach, and</p>	<p style="text-align: right;">176</p> <p>1 representation?</p> <p>2 A I would -- I would not characterize it 3 that way. I would say that from the purposes of 4 analysis, I would assume that these actions would 5 have brought additional pressure on the APA. And 6 had ALPA done all of these, I can conclude that they 7 probably wouldn't have been found in -- in breach of 8 their duty by the jury. But if they had done none 9 of them, they wouldn't have been in breach -- you 10 know, since they did none of them, they were in 11 breach. If they'd done all of them, they probably 12 wouldn't have been. So --</p> <p>13 Q Well, how do -- how do you go about 14 trying to determine what the damages would have been 15 absent a breach of the duty of fair representation 16 without having an understanding of which of these 17 actions constituted part of the breach?</p> <p>18 A Well, I know that all of these actions 19 constituted the breach.</p> <p>20 Q How do you know that?</p> <p>21 A Because these are all of the actions or 22 inactions that ALPA did that led to the jury finding 23 them in breach of their duty, but -- but --</p> <p>24 Q You just testified that you don't know 25 which -- which of these the jury accepted as</p>

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<p style="text-align: right;">177</p> <p>1 being --</p> <p>2 A No, no, no. I said hypothetically --</p> <p>3 sorry. I said hypothetically, if the jury had said</p> <p>4 that one or two of these things didn't constitute</p> <p>5 the breach, would that have changed my analysis? I</p> <p>6 agreed to that, but I don't know that. So I don't</p> <p>7 think I ever agreed that I don't know that all of</p> <p>8 these things were some part of the jury's decision.</p> <p>9 If I said that, then I misstated it.</p> <p>10 Q Well, can you tell me which of these</p> <p>11 the jury concluded constituted part of the breach?</p> <p>12 A All of them.</p> <p>13 Q And that's based on what?</p> <p>14 A The fact that all of them were argued</p> <p>15 and the jury found that ALPA was in breach.</p> <p>16 Q And how do you know that the jury</p> <p>17 accepted the arguments as to each one of these?</p> <p>18 A I have nothing that indicates that they</p> <p>19 didn't.</p> <p>20 Q And you have nothing that indicates</p> <p>21 that they did, either.</p> <p>22 A I have the fact that they decided --</p> <p>23 that they found ALPA guilty, and these were the</p> <p>24 things that they did or didn't do.</p> <p>25 Q So are you assuming then that the jury</p>	<p style="text-align: right;">179</p> <p>1 BY MR. TOAL:</p> <p>2 Q Well, you are attempting to estimate</p> <p>3 damages in this case; correct?</p> <p>4 A That's correct.</p> <p>5 Q And your analysis of damages requires</p> <p>6 you to make an assessment about what additional</p> <p>7 actions ALPA should have taken; correct?</p> <p>8 A I don't know that it required me to</p> <p>9 make an assessment of what ALPA should have done.</p> <p>10 All I know is what ALPA didn't do or did do, okay,</p> <p>11 depending on, you know, the action that we are</p> <p>12 talking about. All of them contributed to the</p> <p>13 jury's decision that ALPA was in violation. I don't</p> <p>14 know which one of these ones may not have ended</p> <p>15 up -- which one of these things may have been less</p> <p>16 compelling to the jury in terms of demonstrating</p> <p>17 that breach. I have no information about that at</p> <p>18 all.</p> <p>19 Q Now, are you assuming for purposes of</p> <p>20 your analysis that TWA -- that ALPA should have</p> <p>21 advised the TWA MEC not to waive its scope</p> <p>22 provision?</p> <p>23 A Not for me to say what ALPA should or</p> <p>24 shouldn't have done. That's an action -- there --</p> <p>25 there was a course of action there that was</p>
<p style="text-align: right;">178</p> <p>1 concluded that each of these was a breach of the</p> <p>2 duty of fair representation for purposes of your</p> <p>3 analysis?</p> <p>4 A I believe that each of these in some</p> <p>5 way contributed to the breach.</p> <p>6 Q And you are certainly trying to assess</p> <p>7 damages with respect to each of these alleged</p> <p>8 actions or inactions; correct?</p> <p>9 MR. JACOBSON: I object to the form of</p> <p>10 the question. Misstates his testimony.</p> <p>11 THE WITNESS: Can I ask you to ask the</p> <p>12 question a different way?</p> <p>13 MR. TOAL: Can you read it back?</p> <p>14 (The court reporter read back the</p> <p>15 pending question as follows:</p> <p>16 "Question: And you are certainly</p> <p>17 trying to assess damages with respect to each</p> <p>18 of these alleged actions or inactions;</p> <p>19 correct?")</p> <p>20 MR. JACOBSON: Same objection.</p> <p>21 THE WITNESS: Yeah. I think that's the</p> <p>22 same question. So maybe if I could ask you to ask</p> <p>23 the question in a slightly different way because I'm</p> <p>24 not really sure I even understand what you mean,</p> <p>25 so --</p>	<p style="text-align: right;">180</p> <p>1 available to it. Not having pursued it is one of</p> <p>2 the things that contributed to the jury's decision.</p> <p>3 That's all I can say about it.</p> <p>4 Q And you say it contributed to the</p> <p>5 jury's decision because it was raised and the jury</p> <p>6 found a breach of the duty of fair representation;</p> <p>7 correct?</p> <p>8 A It was a fact that was before them, and</p> <p>9 the jury decided as the jury decides, so it is one</p> <p>10 of the things that contributed to that decision.</p> <p>11 Q And that's your only basis for saying</p> <p>12 that this specific action contributed to the jury's</p> <p>13 decision; correct?</p> <p>14 A The fact that it was argued and that</p> <p>15 they decided, yes.</p> <p>16 Q Now, did you analyze for purposes of</p> <p>17 your analysis what would have happened if ALPA had</p> <p>18 advised the TWA -- the TWA MEC not to waive its</p> <p>19 scope provision?</p> <p>20 A Well, I examined that issue in terms of</p> <p>21 if they hadn't waived scope, what the impact would</p> <p>22 have been on their negotiating stance. Would it</p> <p>23 have -- so, yes. The answer is yes.</p> <p>24 Q Okay. And what -- what did you</p> <p>25 consider among the options of what would have</p>

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<p style="text-align: right;">181</p> <p>1 happened had ALPA advised the TWA MEC not to waive 2 its scope provision? 3 A What would the outcome of not having 4 waived scope be? 5 Q Yeah. What were the alternatives of 6 how things would have played out? 7 A Only to the extent that it would have 8 increased pressure on the APA to agree to -- to 9 negotiate more intensively. Whether that ultimately 10 would have resulted in the sky falling, I don't 11 know. All I know is that would have increased the 12 TWA pilots' pressure on the APA pilots in 13 negotiations. 14 Q Can you explain your view of how, had 15 the TWA MEC refused to waive its scope provision, it 16 would have applied pressure to the -- to the -- to 17 ALPA? I'm sorry. Withdrawn. 18 Can you explain your view of how, if the -- if 19 the -- if ALPA had advised the TWA MEC not to waive 20 its scope provision, how that would have exerted 21 pressure on the APA? 22 A Well, now the APA would be in a 23 position where they couldn't guarantee they had a 24 right to unilaterally decide the placement of the 25 TWA pilots. It was going to go to some other</p>	<p style="text-align: right;">183</p> <p>1 that's the most memorable one. 2 Q Right. So you say that's the most 3 memorable. I'm trying to understand whether you 4 have any other basis, and it sounds like you do 5 because you are talking about -- 6 A Well, my -- my understanding is that 7 they had very difficult labor relations, and a lot 8 of that I just know from -- from being around so 9 many pilots, and how people have characterized 10 various other groups, and the most concrete thing I 11 can point to in terms of why I have that impression 12 is Steve Fram's closing. 13 Q Do you have an understanding that 14 American Airlines made waiver of the scope and 15 successor -- successorship provisions by the TWA 16 pilots a condition of any transaction with TWA? 17 A I'm -- I'm aware that that was a 18 condition that they made, yeah. 19 Q And do you have any reason to believe 20 that had the TWA MEC refused to waive its scope and 21 successorship provision, that the transaction would 22 have gone forward? 23 A I don't know what would have happened 24 if they hadn't waived their scope. 25 Q Are you aware that TWA filed a 1113</p>
<p style="text-align: right;">182</p> <p>1 fashion of determining whose rights trumped whose 2 rights. So not being a lawyer, I don't know what 3 the, you know, the legal implications of that would 4 have been, had, you know, Compton -- Compton wanted 5 his airline. If he was going to go ahead and 6 acquire TWA and have to deal with his pilots -- I 7 mean, he obviously had no fear of dealing with his 8 pilots, so, you know. I can only speculate that -- 9 Q Why do you say that -- why do you say 10 that Compton had no fear of dealing with his pilots? 11 A Well, Steve Fram said that he didn't 12 have any fear of dealing with his pilots, that, you 13 know, he went after them for \$45 million and, you 14 know, he was a hard negotiator with his own pilots, 15 and I trusted he knows, so -- 16 Q Do you have any basis for concluding 17 that Compton had no fear of his pilots other than 18 the statement by Steve Fram? 19 A Other than the statement by Steve Fram, 20 I think, being the most, you know, memorable example 21 I have of -- of the relationship between management 22 and the APA. 23 Q Anything else you can point to other 24 than the statement by Steve Fram? 25 A Well, like -- like I say, I think</p>	<p style="text-align: right;">184</p> <p>1 motion with the bankruptcy court? 2 A I -- I am. 3 Q And do you know what an 1113 motion is? 4 A Something to do with bankruptcy. 5 Q Do you know anything more than that? 6 A Very little. 7 Q Did you have an understanding that TWA 8 filed a motion to invalidate its collective 9 bargaining agreement with the TWA pilots, including 10 the scope and successorship provisions? 11 A I know that there was a motion being 12 brought to the bankruptcy court to do that, yes. I 13 mean, that was in the closing. 14 Q And did you have an understanding of, 15 in the absence of a decision by the TWA pilots to 16 waive their scope and successorship provisions, 17 whether the bankruptcy court was likely to grant 18 that motion? 19 A I have no understanding whatsoever of 20 the likelihood that the -- what the bankruptcy court 21 would have done if they argued that their scope 22 provisions shouldn't be abrogated, so -- 23 Q Do you have any understanding of the 24 APA's views about whether, in the absence of TWA's 25 pilots waiving their scope and successorship</p>

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<p style="text-align: right;">185</p> <p>1 provisions, that American Airlines would walk away 2 from the transaction?</p> <p>3 A That's -- I understand their 4 contention. Again, that's what Fram said in his 5 closing they would have done. I don't know that 6 anyone can say for certain that's what would have 7 happened.</p> <p>8 Q Do you have any understanding of the 9 APA's perception of the likelihood that American 10 Airlines would walk away from the transaction in the 11 event that the TWA pilots refused to waive their 12 scope and successorship provisions?</p> <p>13 A I'm -- I'm -- I am led to believe that 14 that was their disbelief.</p> <p>15 Q So if that was their belief, how would 16 it apply pressure to the APA for the TWA pilots to 17 have refused to waive their scope and successorship 18 provision?</p> <p>19 A Well, it's one thing to have waived it 20 and -- and say, yeah, see, we were right. The 21 transaction went ahead. If they hadn't waived scope 22 and they were in a position where who knows what's 23 going to happen, they have more of an incentive to 24 negotiate.</p> <p>25 Q Why -- why would the APA have more of</p>	<p style="text-align: right;">187</p> <p>1 Q And did you assess -- on figure three, 2 you purport to present a --</p> <p>3 A I'm sorry. Which page are you on?</p> <p>4 Q Page ten. Figure three, you purport to 5 present a linear model of probabilities concerning 6 these actions or inactions by ALPA; correct?</p> <p>7 A That's correct.</p> <p>8 Q And -- and you -- you add probabilities 9 that you've assigned to each of these actions; 10 correct?</p> <p>11 A Right.</p> <p>12 Q And so were you assuming for purposes 13 of your analysis that ALPA would have had the 14 ability to pursue each and every action on this 15 list?</p> <p>16 A The assumption is yes because, you 17 know, again, none of these things were predicated on 18 success of any one of them on its own having 19 achieved what it set out to do. So the model is 20 based on -- if they hadn't waived scope, it would 21 have increased pressure. Now, if they had been 22 successful in -- in not waiving scope and, you know, 23 this 1113 business that you are talking about, not 24 having removed their scope provisions, if that had 25 been successful, who knows what would have happened?</p>
<p style="text-align: right;">186</p> <p>1 an incentive to negotiate?</p> <p>2 A Because there is no way that the APA 3 could have known what American was absolutely going 4 to do if they hadn't waived scope. They could 5 speculate, they could believe, but had they not 6 waived scope, no one can say conclusively what would 7 have happened. So all that -- my only concern in 8 that whole scenario is what that would have done to 9 the dynamics of the negotiation.</p> <p>10 Q If TWA had refused to waive its scope 11 and successorship provisions, would that have 12 affected ALPA's ability to pursue any of the other 13 actions on your list?</p> <p>14 A I'm sorry. Could I ask you to just 15 repeat that question?</p> <p>16 Q Yeah. If the TWA MEC had refused to 17 waive their scope in successorship provisions, would 18 that have affected ALPA's ability to undertake any 19 of the other actions on your list?</p> <p>20 A Well, I mean, that would have set off 21 an alternative course in history, and so some of 22 these might never have come to pass. Would they 23 have been in a position to say, let's try and delay 24 the purchase with the DOT? That may have made 25 absolutely no sense if they'd waived scope.</p>	<p style="text-align: right;">188</p> <p>1 All of this would probably not have come to pass, 2 and we wouldn't even be having this conversation, 3 right?</p> <p>4 So all I'm doing is saying, if we look at each 5 one of these actions, what would its impact on the 6 negotiations have been at a marginal level, and then 7 use a linear model, add them up, and see what the 8 probabilities of all of these having been pursued, 9 and assuming all of them could have been pursued. 10 Because unless you assume that one of them 11 succeeded, you would assume that they would go onto 12 the next. So what you are talking about is more of 13 a feedback model. And with a feedback model, you do 14 have to assume that some of these have some degree 15 of success and they forced all -- you pursuing other 16 courses of action. That's not the type of model 17 that I've used here, because we cannot know how 18 successful any one of these things would have been 19 in achieving whatever it set out to do. I assume 20 they were all set out in one way or the other to 21 achieve something like an arbitration or a mutually 22 agreed upon list.</p> <p>23 Q Well, let me -- let me try and 24 understand what you are doing here. So referring to 25 figure three, the first item you list is insist on</p>

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<p style="text-align: right;">189</p> <p>1 waiving scope; correct?</p> <p>2 A That's correct.</p> <p>3 Q And you have a five percent under Delta</p> <p>4 perception; do you see that?</p> <p>5 A Under the change in perception of the</p> <p>6 importance of -- yes.</p> <p>7 Q Okay. So does the five percent</p> <p>8 represent what you regard as an increased likelihood</p> <p>9 of an agreement being reached?</p> <p>10 A The five percent is the increased</p> <p>11 likelihood of an agreement being reached, that's</p> <p>12 correct.</p> <p>13 Q And is it the increased likelihood,</p> <p>14 specifically of this -- an agreement being reached</p> <p>15 on the Salamat model?</p> <p>16 A That's correct.</p> <p>17 Q And if you are using any other model,</p> <p>18 you would change these percentages?</p> <p>19 A Yes, you would have to.</p> <p>20 Q And does the five percent represent</p> <p>21 that, whether the particular action was successful</p> <p>22 or not, that there would be a five percent --</p> <p>23 A There is a five percent probability</p> <p>24 that that action would have led to an agreement.</p> <p>25 Not that it would have succeeded, that it would have</p>	<p style="text-align: right;">191</p> <p>1 opposed to it. At what point in time some were --</p> <p>2 were in favor of it, I -- I -- I don't know that I</p> <p>3 can recall.</p> <p>4 Q Do you have any information about the</p> <p>5 percentages of TWA pilots who favored and opposed</p> <p>6 waiving scope?</p> <p>7 A I -- I do not.</p> <p>8 Q Do you have an understanding of what</p> <p>9 role, if any, ALPA's advice to the TWA MEC had on</p> <p>10 the TWA MEC's decision to waive scope?</p> <p>11 A My understanding is that it tipped the</p> <p>12 balance towards that being the decision.</p> <p>13 Q What's the basis for that</p> <p>14 understanding?</p> <p>15 A I would have to go back and re-read</p> <p>16 parts of the transcript. But there was -- bear with</p> <p>17 me for a moment. I'm just trying to refresh my</p> <p>18 memory as to which issue it was when ALPA was</p> <p>19 bringing pressure to bear on the MEC. I believe it</p> <p>20 was a -- a limited number of people who ALPA -- ALPA</p> <p>21 having said you should waive scope, still thought it</p> <p>22 shouldn't be done and eventually were outvoted. So</p> <p>23 no, I don't know that I can give you a percentage.</p> <p>24 Q So my question was specifically what</p> <p>25 gave you the understanding that any recommendation</p>
<p style="text-align: right;">190</p> <p>1 led to an agreement.</p> <p>2 Q There is a five percent likelihood that</p> <p>3 whether the action was successful or not, that it</p> <p>4 would have led to the Salamat model being agreed</p> <p>5 upon?</p> <p>6 A Yes.</p> <p>7 Q So if -- for instance, take the first</p> <p>8 one. If ALPA had advised the TWA MEC not to waive</p> <p>9 their scope, but the TWA MEC decided to do it</p> <p>10 anyway, would you say in that instance there is a</p> <p>11 five percent increased likelihood of an agreement</p> <p>12 being reached?</p> <p>13 A Well, my understanding is -- is the TWA</p> <p>14 pilots did not want to waive scope, so it is kind of</p> <p>15 difficult to answer the question. I mean, if I</p> <p>16 thought -- if there was some evidence that the TWA</p> <p>17 pilots were all prepared to -- to waive scope, I --</p> <p>18 I -- I might have to view that one differently</p> <p>19 because presumably then the TWA pilots wouldn't</p> <p>20 carry that -- that scope waiver issue into the</p> <p>21 negotiation with any meaningful force, so it's kind</p> <p>22 of hard to answer that question.</p> <p>23 Q Do you have an understanding that there</p> <p>24 were some TWA pilots who favored waiving scope?</p> <p>25 A I -- I understand that not all were</p>	<p style="text-align: right;">192</p> <p>1 by ALPA about waiving scope tipped the balance?</p> <p>2 A Because as I understood it, several</p> <p>3 people at TWA MEC did not want to waive scope, and</p> <p>4 it was only by pressure by ALPA that anyone agreed</p> <p>5 to it.</p> <p>6 Q Well, I understand you are saying</p> <p>7 that's your -- that's your recollection of what</p> <p>8 happened. I'm asking about the basis for that</p> <p>9 belief that you have. What source of information</p> <p>10 are you relying upon?</p> <p>11 A Again, this would be the -- this would</p> <p>12 be the testimony of Mike Day, and Allen Press's</p> <p>13 closing, and parts of Fram's closing, as well, where</p> <p>14 they all characterized what was going on on some day</p> <p>15 in April of 2001, 2000.</p> <p>16 Q Okay. So closing arguments are not</p> <p>17 considered evidence.</p> <p>18 A Uh-huh.</p> <p>19 Q With respect to evidence that you are</p> <p>20 relying upon, testimony, documents, the only thing</p> <p>21 that you would point to as supporting your belief</p> <p>22 that the -- that any recommendation by ALPA tipped</p> <p>23 the scale as to whether the TWA MEC should waive</p> <p>24 scope is the testimony of Mike Day; is that correct?</p> <p>25 MR. JACOBSON: I object -- I object to</p>

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<p style="text-align: right;">193</p> <p>1 the form of the question. The inclusion of the</p> <p>2 statement closing arguments are not evidence may be</p> <p>3 true as far as the deliberation of the jury in that</p> <p>4 case. As to what is reasonable for an expert to use</p> <p>5 and rely on in reaching his opinion, that's not a</p> <p>6 true statement.</p> <p>7 BY MR. TOAL:</p> <p>8 Q Excluding closing arguments.</p> <p>9 A Mike Day's testimony.</p> <p>10 Q Is the only thing you relied upon for</p> <p>11 that belief?</p> <p>12 A Excluding closing statements.</p> <p>13 Q Excluded closing arguments; is that</p> <p>14 correct?</p> <p>15 A Mike Day's' -- Mike Day's testimony.</p> <p>16 Q Now, did you take into consideration</p> <p>17 any of the negative outcomes that might have taken</p> <p>18 place if the TWA MEC had refused to waive scope?</p> <p>19 A In real life, if they had failed to</p> <p>20 waive scope, did I -- did I contemplate what might</p> <p>21 have happened?</p> <p>22 Q In your analysis of trying to assess</p> <p>23 damages, do you take into account any of the</p> <p>24 negative outcomes for the TWA pilots that could have</p> <p>25 occurred had the TWA MEC refused to waive scope?</p>	<p style="text-align: right;">195</p> <p>1 a result of the 1113 motion?</p> <p>2 A Well, you know, in a practical fashion,</p> <p>3 it does assume that the transaction goes on because</p> <p>4 obviously there is -- there's future actions that</p> <p>5 happen in the future that are still to be pursued.</p> <p>6 I don't think it makes any assumptions about what</p> <p>7 the bankruptcy court might have done, only what</p> <p>8 impact it would have had on the negotiations.</p> <p>9 Q So if --</p> <p>10 A And more -- actually, I'm not quite</p> <p>11 done.</p> <p>12 Q Uh-huh.</p> <p>13 A The perception of the TWA pilots</p> <p>14 themselves in the negotiation, you know, in the</p> <p>15 most -- in the most practical sense, you know, if</p> <p>16 ALPA stands up and says we are not going to waive</p> <p>17 our scope, we are going to fight this thing, we are</p> <p>18 going to fight it in bankruptcy court, they might</p> <p>19 have been miserable failures at it, but it would</p> <p>20 certainly have changed the perception of the TWA</p> <p>21 pilots in the eyes of the APA, so that's -- that's</p> <p>22 my consideration, not how successful they would have</p> <p>23 been.</p> <p>24 Q But change -- change in perception as</p> <p>25 used in Sycara's work doesn't focus on changing</p>
<p style="text-align: right;">194</p> <p>1 A I would have to say negative -- I mean,</p> <p>2 my analysis is limited to the impact, those actions</p> <p>3 on the negotiation, not on what they might have done</p> <p>4 outside of the negotiations. So strictly speaking,</p> <p>5 no, I guess, because if they had waived scope and</p> <p>6 American Airlines had decided not to go ahead with</p> <p>7 the merger, that's -- that's not an eventuality that</p> <p>8 goes into the consideration of the effect on the</p> <p>9 negotiations.</p> <p>10 Q So if the TWA MEC had refused to waive</p> <p>11 scope and American had walked away from the</p> <p>12 transaction, there would be no seniority integration</p> <p>13 left to negotiate about; correct?</p> <p>14 A That's -- that's quite possible, no.</p> <p>15 If that had happened, then that would have happened.</p> <p>16 But as I said, that's not what I'm analyzing here.</p> <p>17 That would be an analysis of the likely success of</p> <p>18 these things, you know, in achieving their goals,</p> <p>19 not their effect on the negotiation.</p> <p>20 Q So with respect to insisting on waiving</p> <p>21 scope, if the TWA MEC had refused to waive scope,</p> <p>22 are you assuming for purposes of your analysis that</p> <p>23 American Airlines does not walk away from the</p> <p>24 transaction and that the bankruptcy court does not</p> <p>25 invalidate the scope and successorship provisions as</p>	<p style="text-align: right;">196</p> <p>1 perception of the other party in the negotiation.</p> <p>2 A The perception of the importance of</p> <p>3 stapling two thirds of them, or stapling all of them</p> <p>4 I guess would be the position that they would have</p> <p>5 had at that time.</p> <p>6 Q But my question, when you talk about</p> <p>7 change in perception, based on Sycara's work, that's</p> <p>8 not a change in your perception of the other party</p> <p>9 to the negotiation?</p> <p>10 A No. That's true. That's very true,</p> <p>11 yes.</p> <p>12 Q Now, if TWA had refused to waive scope</p> <p>13 and the bankruptcy court had invalidated the scope</p> <p>14 and successorship provisions in the 1113 motion,</p> <p>15 does your analysis assume that there would still be</p> <p>16 a five percent increased likelihood of -- of the TWA</p> <p>17 MEC and the APA agreeing on the Salamat model?</p> <p>18 A It does, because the importance -- the</p> <p>19 perception of the importance of the APA's position</p> <p>20 will have been shifted by the fact that they have --</p> <p>21 they put up a fight at that stage in the</p> <p>22 negotiations. So, yeah, I would say there is still</p> <p>23 a five percent chance that they would have agreed to</p> <p>24 the Salamat model. I mean, five percent being</p> <p>25 pretty low, being -- but, you know, still a five</p>

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<p style="text-align: right;">197</p> <p>1 percent chance that it would have improved the 2 negotiation between -- to the extent that they would 3 have agreed.</p> <p>4 Q So -- so your analysis assumes a five 5 percent increased likelihood of the Salamat model 6 being agreed upon without regard to whether the 7 bankruptcy court invalidates the scope and 8 successorship provisions; correct?</p> <p>9 A That's correct.</p> <p>10 Q And again, when you talked about 11 perception there, you were talking about the APA's 12 perception of the TWA pilots.</p> <p>13 A The importance of its goal of stapling 14 all of them at that point. I mean, it's very 15 difficult, you know, when you are talking about the 16 perception of an issue versus the perception of your 17 negotiating partner, right, because they are 18 intimately tied together in this case.</p> <p>19 Q Well, Sycara doesn't talk at all about 20 perception of the other party to the negotiation; 21 does she?</p> <p>22 A Well, she can't, because she is not 23 talking about pilots. She is talking about a 24 situation where you've got, you know, multiple 25 issues being considered. So, I mean, if you were in</p>	<p style="text-align: right;">199</p> <p>1 because now there is a question about this, and so 2 your willingness to negotiate, at least in theory, 3 would improve.</p> <p>4 Q You say, in theory. Why do you add 5 that qualification?</p> <p>6 A Because occasionally people can be 7 irrational and we have to go on the assumption that 8 people are acting rationally and responsibly -- 9 responsibly, and not acting like crazy people who 10 decide, oh, I'm going to burn the building down 11 because my lunch was cold. All right. So, I mean, 12 that happens, but you don't build models on that 13 assumption. You build models on the assumption that 14 people are acting rationally.</p> <p>15 Q Well, if I'm trying to build a model to 16 estimate how the APA is going to respond, shouldn't 17 I be interested in what I know about how the APA is 18 likely to respond?</p> <p>19 A If you can say definitively, perhaps. 20 If you can say, you know what they said was, if you 21 do this, I'm going to do that. Well, I mean, you 22 can't build models based on idle threats either, 23 right? You know, what we have is hard evidence that 24 their negotiating position improved over time on 25 whatever little pressure the TWA pilots were able to</p>
<p style="text-align: right;">198</p> <p>1 a traditional collective bargaining situation and 2 there's 50 things on the table, it's much easier to 3 say, you know, your perception. In this case there 4 is really only one, which is, where does everybody 5 on the other side go? So the distinction is 6 between, you know, perception and importance get 7 harder to make, as I'm sure you can understand, when 8 you are dealing with basically one single issue, a 9 seniority list.</p> <p>10 Q So how would it have changed the APA's 11 perception of any of its goals if TWA, the TWA MEC 12 had refused to waive scope and the bankruptcy court 13 had invalidated the scope and successorship 14 provisions anyway?</p> <p>15 A Well, again, not changing perceptions 16 is predicated on a particular outcome of that course 17 of action. I'm not concerned so much with the -- 18 you know, I mean, I'm not concerned at all with the 19 -- with the likely outcome of having done these are 20 except to the extent that it would have changed the 21 dynamics of the negotiation. So now you are 22 negotiating with someone whose -- whose national 23 union is fighting to protect their scope. So you 24 can't guarantee to your members or to your own MEC 25 that you have an absolute right to do anything,</p>	<p style="text-align: right;">200</p> <p>1 bring to the table, and so that you can reasonably 2 make some conclusions from to say, well, if you guys 3 do this, then I'm going to take my stuff and go 4 home. I mean, you could build a model off of that. 5 I don't know how solid it would be.</p> <p>6 Q You could build a model based on the 7 assumption that the APA was trying to get the best 8 deal for its pilots that it could get; correct?</p> <p>9 A Well, you -- you would have a hard time 10 doing -- explaining away the fact that that list 11 kept getting better and better for the TWA pilots, 12 if what they were seeking was to get the best list 13 -- because a staple, a hundred percent staple would 14 have been the best list for their pilots, so, you 15 know, its very difficult to start from that premiss. 16 It's much easier to start from the premise of 17 they're trying to be rational and fair because they 18 kept saying over, and over, and over they wanted to 19 be fair, and my experience with pilots is they want 20 to be fair, more than anything else. Sometimes you 21 got to force them to do it, but that's what they 22 want to do.</p> <p>23 Q So if the TWA MEC had refused to waive 24 scope, and American Airlines didn't walk away from 25 the transaction, and the bankruptcy court didn't</p>

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<p style="text-align: right;">201</p> <p>1 invalidate the scope and successorship provisions, 2 how would any of these other actions have been 3 pursued? 4 A They may not have been necessary. But, 5 I mean, again, you are talking -- you are asking me 6 to speculate on the outcome of the action having 7 succeeded, and that's not really what my report is 8 about. I mean -- I think -- 9 Q Well, you add these probabilities of 10 different events occurring which is suggestive of 11 the fact that you think all of them could have been 12 pursued -- 13 A But if I said, okay, this is a five 14 percent chance of this having succeeded, and if it 15 actually succeeds, well, then I guess then there is 16 a zero percent chance of the other succeeding 17 because the goal has already been achieved. So if 18 they hadn't waived scope, and they said, all right, 19 fine, we are going to have an arbitration, well 20 there is a zero chance probability that any of these 21 other things would even have ended up on the list. 22 So you are asking a question that can't be answered 23 logically. So maybe there is -- there is some other 24 way we can -- we can answer your question that 25 doesn't kind of --</p>	<p style="text-align: right;">203</p> <p>1 successful would have been, and I can't speculate on 2 that because I don't know. It didn't happen, and I 3 don't really even have the expertise to guess what 4 the legal ramifications of that eventuality would 5 be. 6 Q Oh, but you are presenting an analysis 7 that presuppose that all of these actions could have 8 been pursued, and I'm asking, did you undertake any 9 analysis to see if that was, in fact, true? 10 A The model, as you said and as I said, 11 is a linear model. It assumes all of these actions 12 were available, and that if one of them succeeds in 13 achieving its objective, all the others are either 14 unavailable or redundant. So, you know, the chance, 15 as I said, there is a five percent chance that 16 waiving scope could have produced the damage model. 17 Again, if -- if that five percent translates into 18 the desired outcome, in this case the damage model, 19 then the others are redundant. Each one has a five 20 -- I mean, you do understand, you know, if your goal 21 is to roll a six, you got a one in six chance of 22 rolling it, you know, and there is a one in six 23 chance of rolling a five, and a one in six chance of 24 rolling a four. If you roll a six, you are not 25 going to roll five more times. That's, you know,</p>
<p style="text-align: right;">202</p> <p>1 Q Well -- well, even if everything goes 2 perfectly for the TWA pilots after they refuse to 3 waive scope, American Airlines doesn't walk away 4 from the transaction, the bankruptcy court doesn't 5 invalidate the scope provision, all you have in that 6 situation is a TWA collective bargaining agreement 7 that says they are entitled to arbitrate seniority 8 integration disputes, and you have an APA agreement 9 that has no obligation to arbitrate seniority 10 integration disputes; correct? 11 A That's correct. 12 Q And in that situation, are you taking 13 the position that any of these other actions could 14 have been pursued by ALPA? 15 A You are asking me to speculate on, you 16 know, a -- a legal context. I don't know -- I don't 17 have any skills to speculate on to say what -- what 18 would the negotiation between the two parties and 19 American, and presumably the creditors, look like if 20 they hadn't waived scope, and American hadn't walked 21 away from the deal, and their -- their contract 22 hadn't been abrogated, at least the scope hadn't 23 been abrogated, what would the negotiation have 24 looked like? And again, that leads me to speculate 25 on what the outcome of that strategy being</p>	<p style="text-align: right;">204</p> <p>1 that's a linear probability problem, right? Why 2 would you roll the dice six times if you already 3 achieved your goal? Your probability is one in six. 4 You got it on the first roll. Everyone can go home. 5 That's not what the exercise here is. The exercise 6 says, if you roll that dice once, you got a one in 7 six chance of hitting a six. And if I give you two 8 rolls, you got a one in three. I give you three 9 rolls, one in two, and on and on, so that's how the 10 model works. It doesn't say that, you know, your 11 one in six chance is any different because you hit 12 it on the first roll. 13 Q So your analysis on insisting on 14 waiving scope is that, if ALPA had advised against 15 waiving scope, that based on that action alone, the 16 TWA MEC had a one in 20 chance of negotiating the 17 Salamat agreement; is that correct? 18 A One in 20. 19 Q How did you -- how did you decide upon 20 this five percent or one in 20? 21 A A lot of it was based on just 22 experience in negotiation and reading what -- 23 comparing Sycara's model from what I know in the 24 real world and what other people have said. 25 Particularly, you know, a lot of the stuff that is</p>

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